

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

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Case No. 34-2009-63714

JOAN BOICE, by and through her Successor-in-)
Interest, ERIC BOICE, and MYRON BOICE, ERIC)
BOICE, NANCEE BOICE, and MARK BOICE,)
individually,)

Plaintiffs,)

v.)

EMERITUS CORPORATION, EMERITUS SENIOR LIVING AT)
EMERALD HILLS, RHONDA CASTLEBERG, et al.,)

Defendants.)
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Videotaped Deposition of

LEWIS GRANGER COBB, CEO

Tuesday, October 30th, 2012

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Reported by CHERYL L. KYLE, CSR No. 7014

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Certified Shorthand Reporters
2315 Capitol Avenue, Suite 1010
Sacramento, CA 95816

916-492-1010

877-453-1010

FAX 916-492-1222

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For the Plaintiffs:

BY: LESLEY A. CLEMENT, Attorney at Law

BY: BRYAN R. REID, Attorney at Law
RIMA BADAWIYA, Attorney at Law

SCOTT A. SMITH, Attorney at Law

Mark Finkelstein, General Counsel of Emeritus

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INDEX OF APPEARANCES

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DISCOVERY REFEREE:

HONORABLE THOMAS M. CECIL

THE VIDEOGRAPHER:

D.B. Ronk and Associates
2600 X Street
Sacramento, California 95818
916-455-7363
Info@dbRonk.com
BY: ERIK URIAS

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465	05	5-page Notice of Oral and Videotaped Deposition of Granger Cobb and Request for Production of Documents.
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466	05	12-page Defendant's Objections to Notice of Oral and Videotaped Deposition of Granger Cobb, Chairman of the Board and RFP.
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467	05	4-page 2011 10K report slides.
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1 BE IT REMEMBERED that, pursuant to Notice, and
2 on Tuesday, the 30th day of October, 2012, commencing
3 at the hour of 12:59 p.m. thereof, at Riddell Williams,
4 1001 Fourth Avenue, Suite 4500, Seattle, Washington,
5 before me, CHERYL L. KYLE, a Certified Shorthand
6 Reporter in and for the County of Sacramento, State of
7 California, there personally appeared

8

9 **LEWIS GRANGER COBB,**

10

11 called as a witness herein, who, being by me first duly
12 sworn, was thereupon examined and interrogated as
13 hereinafter set forth.

14

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(Plaintiffs' Exhibits 265
through 267 were marked
for identification.)

16

17 THE VIDEOGRAPHER: We are on the record at
18 12:59 p.m. The date is October 30th, 2012. Good
19 afternoon, my name is Erik Urias, and I will be
20 videotaping this proceeding. I'm employed by Ronk and
21 Company located at 2600 X Street in Sacramento,
22 California 95818. We are located at 1001 Fourth
23 Avenue, Seattle, Washington. This will be the -- or
24 we're here in the matter of Boice verse Emeritus,
25 et al. This will be the deposition of Lewis Granger

1 Cobb. The attorney noticing the deposition is Lesley
2 Clement representing the plaintiff. The court reporter
3 is Cheryl Kyle of Scribe Reporting.

4 Would all counsel please identify themselves,
5 the firm they are with, and whom they represent.

6 MS. CLEMENT: Lesley Clement for the plaintiffs.

7 MR. REID: Bryan Reid for the defendants.

8 MR. SMITH: Scott Smith of Riddell Williams
9 representing Mr. Cobb personally.

10 MS. BADAWIYA: Rima Badawiya; Lewis, Brisbois,
11 Bisgaard and Smith.

12 MR. FINKELSTEIN: Mark Finkelstein, general
13 counsel of Emeritus.

14 THE VIDEOGRAPHER: The court reporter may swear
15 in the witness.

16 THE REPORTER: Please raise your right hand to
17 be sworn. Do you solemnly swear or affirm that the
18 testimony you are about to give in these proceedings
19 will be the truth, the whole truth, and nothing but the
20 truth?

21 THE WITNESS: I do.

22 MS. CLEMENT: And do we have the stipulation,
23 counsel, that all the laws pertaining to California
24 depositions will be in place here?

25 MR. REID: Yes.

1 MR. SMITH: Yes.

2 MS. CLEMENT: Thank you.

3 EXAMINATION BY MS. CLEMENT

4 Q. Good afternoon, Mr. Cobb. Can you please state
5 your full name and address for the record?

6 A. Lewis Granger Cobb, 1521 Second Avenue, Seattle
7 Washington 98101.

8 Q. What's your date of birth?

9 A. 7/29/60.

10 Q. And where are you currently employed?

11 A. Emeritus Senior Living.

12 Q. What's your job title?

13 A. I'm the chief executive officer and president.

14 Q. And how long have you held that position with
15 Emeritus?

16 A. I have been CEO for about two years, and prior
17 to that I was co-CEO beginning in September of 2007.

18 Q. And did you become co-CEO with the merger of the
19 assisted living chain known as Summerville with
20 Emeritus?

21 A. Yes.

22 Q. And had you been the CEO of Summerville?

23 A. Yes.

24 Q. And prior to that the CEO of Cobb Co?

25 A. Yes.

1 Q. And how many years have you been in the assisted
2 living industry?

3 A. About 27 years.

4 Q. And as the co-CEO of Emeritus and now the CEO of
5 Emeritus, have your job duties remained basically the
6 same?

7 A. Yes.

8 Q. And can you tell us what your job duties have
9 been as the CEO and co-CEO of Emeritus?

10 A. I am responsible for two things. I'd say
11 primarily one is building the infrastructure in terms
12 of, you know, oversight for operations and the
13 financial component and the regulatory components, all
14 of the aspects of operating our senior living
15 portfolio.

16 And then, secondly, really focused on looking
17 out, you know, three months, one year, three years,
18 five years to help develop the strategic direction for
19 the company.

20 Q. Have you ever had your deposition taken before?

21 A. Yes.

22 Q. And how many times?

23 A. Two that I recall.

24 Q. And what were those cases involving?

25 A. One was when I was with Summerville, and it

1 involved a contractual dispute regarding real estate
2 and management of a couple of properties in
3 Connecticut.

4 Q. And the other?

5 A. And the other was with Cobb Co, and it involved
6 a dispute regarding a management contract with a local
7 hospital.

8 Q. And what state was that in?

9 A. That was in California.

10 Q. And was that a contract with a skilled nursing
11 facility or assisted living facility?

12 A. It was actually -- I was operating a skilled
13 nursing facility on behalf of an acute hospital, and so
14 it was a dispute between me as the operator of the
15 skilled nursing and they as the operator of the acute
16 hospital.

17 Q. What hospital was that?

18 A. Brookside Hospital in San Pablo.

19 Q. Were you operating the certified distinct part
20 of the hospital, or was it a standalone?

21 A. It was a standalone certified distinct part.

22 Q. And what was the nature of the dispute between
23 Brookside and Cobb Co in its management of the
24 certified distinct part skilled nursing unit?

25 A. I'm trying to remember exactly. I mean it was

1 over fees. I can't remember exactly what the -- what
2 the -- the dispute was. It was probably in the
3 early '90s.

4 Q. Were any allegations of fraud made in that case?

5 A. No.

6 Q. Any allegations of improper billing?

7 A. No.

8 Q. Do you understand that you're testifying here
9 under penalty of perjury?

10 A. Yes.

11 Q. And what that means in lay terms is that there
12 are penalties associated with lying under oath in
13 California. Those penalties are two to four years in
14 jail if you're found to have committed perjury.
15 Therefore, it's very important that you understand my
16 questions. If you don't understand a question, please
17 let me know. It's also very important that we don't
18 speak over each other. That's going to be difficult to
19 do because from time to time counsel will be making
20 objections. And so it's a good idea for you to pause
21 and allow for that objection to be made, and I will
22 always afford the courtesy of counsel making objections
23 if they so desire. We have Judge Cecil here today to
24 rule on objections, and so there's potentially a lot of
25 people talking. We don't want to talk over each other

1 because then I have to start over since we are on
2 videotape. Also, for you as the witness, when the
3 lawyers start talking a lot, what happens is you can
4 forget the question because you're focusing on all this
5 distracting noise. So just let me know, and either
6 myself or our court reporter can read it back to you,
7 okay?

8 A. Okay.

9 Q. Do you have any questions of me before we start?

10 A. No. Excuse me.

11 Q. Sure.

12 You're familiar with Emeritus' mission
13 statement?

14 A. Yes.

15 Q. And the promise that Emeritus makes in its
16 mission statement, are you familiar with that?

17 MR. REID: It's vague.

18 THE WITNESS: I'm not sure what the -- you might
19 be confusing two different things.

20 Q. BY MS. CLEMENT: So in Emeritus' mission
21 statement, they have, "Our promise is that our family
22 is committed to yours." Are you familiar with that?

23 A. Yes, that's a brand promise. That's separate
24 from our mission statement.

25 Q. And why do you say that "Our family is committed

1 to yours," is separate from your mission statement?

2 A. It was part of a process where we went out to
3 the field when we were looking to brand the company
4 shortly after the merger, and we asked all of our staff
5 throughout the country to submit ideas on a -- what
6 working for Emeritus means for them.

7 And based on a couple thousand, you know,
8 responses back to our questions, we kind of put all of
9 the answers up, and there were a lot of key -- a lot of
10 words that kept coming up, and one of them was
11 "family." One of them was "commitment," you know, some
12 other variations.

13 And ultimately a big group of us created -- you
14 know, decided that this is what is going to resonate
15 with our staff, and we created our brand promise.

16 Q. Okay. And so why do you say your brand promise,
17 "Our family is committed to yours," is not part of your
18 mission statement?

19 A. Well, our mission statement is a specific
20 statement. It's -- there's a mission statement, and
21 there is a brand promise. So there's two different
22 pieces.

23 Q. And "Our family is committed to yours," does
24 that mean that Emeritus is committed to treating their
25 residents as if they were their own family?

1 A. Yes.

2 Q. And when Emeritus markets itself, it says, "Our
3 promise," meaning our promise to the residents that
4 Emeritus is committed to treating the residents as if
5 they were their own family?

6 MR. REID: That's vague, argumentative,
7 overbroad, calls for speculation.

8 THE WITNESS: We -- we -- the -- the brand that
9 we have created, the brand promise that we have created
10 that appears in our communities and it appears in most
11 of our materials is, "Our family is committed to
12 yours." And we try to operationalize that among all of
13 our staff throughout all of our communities. I mean
14 it's something that they are -- is a part of their
15 orientation, a part of their training, is a part of
16 everything that we do relative to our -- to our -- our
17 human capital.

18 Q. In the marketing materials that Emeritus
19 publishes, is the phrase, "Our promise: Our family is
20 committed to yours," is that a promise being made to
21 the families and the residents that Emeritus serves?

22 MR. REID: It's vague, lacks foundation,
23 overbroad, and speculative.

24 THE WITNESS: It doesn't say, "Our promise,"
25 per se. It says, "Our family is committed to yours."

1 That's what everything on the marketing material says.

2 Q. BY MS. CLEMENT: I'm actually looking at your

3 website right now.

4 A. Okay.

5 Q. It says, "Our promise: Our family is committed

6 to yours."

7 A. Okay.

8 Q. So is that, "Our promise," the promise that

9 Emeritus is making to families and the residents that

10 Emeritus serves?

11 A. Yes, yes.

12 MR. REID: Vague, it lacks foundation.

13 THE WITNESS: But it's our brand promise. We

14 call it that.

15 Q. BY MS. CLEMENT: When you say, "It's our brand

16 promise," actually the marketing material doesn't say

17 brand promise, it says, "Our promise," correct?

18 MR. REID: It's overbroad, lacks foundation.

19 THE WITNESS: If it says it there, then I trust

20 you, yes.

21 Q. BY MS. CLEMENT: Would you agree that that's the

22 promise that Emeritus is making to residents and their

23 families, that Emeritus will be committed to their

24 customers as if they were their own family members?

25 MR. REID: Asked and answered, and

1 argumentative.

2 THE WITNESS: Yes.

3 MS. CLEMENT: Can we get a ruling on that?

4 Sorry, I didn't ask.

5 JUDGE CECIL: On that?

6 MS. CLEMENT: Yes.

7 JUDGE CECIL: Sustained.

8 Q. BY MS. CLEMENT: Is "Our promise" in the
9 Emeritus' marketing materials that, "Our family is
10 committed to yours," what's the purpose of saying that
11 to the public?

12 MR. REID: It's vague, and it's asked and
13 answered.

14 Go ahead.

15 THE WITNESS: "Our family is committed to yours"
16 is something that we identify with throughout our
17 organization, and so we communicate that externally
18 through our marketing materials. We -- we usually have
19 it stencilled somewhere on the walls of our
20 communities. It's in, like I said, all of our
21 orientation materials and hiring materials. It's --
22 it's part of our culture as a company. So we -- we --
23 we try to use it, you know, keep it a part of that --
24 the culture throughout the organization.

25 Q. BY MS. CLEMENT: Okay. And so Emeritus is

1 making -- strike that.

2 As part of this "Our family is committed to
3 yours" culture that is on the Emeritus' mission
4 statement website, does this mean not only to Emeritus'
5 residents but also to Emeritus' employees?

6 MR. REID: No, hold on.

7 I'm going to object that the question misstates
8 his testimony, it's compound and argumentative, it's
9 also asked and answered. It assumes facts not
10 established that it's in the mission statement. It
11 contradicts what he said.

12 MS. CLEMENT: I think I said the mission
13 statement page.

14 Q. But if you open up the Emeritus website, and you
15 go to the mission statement page, there's your mission
16 statement, core values, company management goals, and
17 "Our promise that our family is committed to yours."
18 Are you familiar with that?

19 A. Yes.

20 Q. And this "Our promise: Our family is committed
21 to yours," does that mean Emeritus is committed to both
22 residents and employees to treat them both as if they
23 were part of the Emeritus' family?

24 MR. REID: It's asked and answered.

25 Go ahead.

1 JUDGE CECIL: Do you want a ruling?

2 MS. CLEMENT: Yes.

3 JUDGE CECIL: Overruled.

4 You can answer the question.

5 THE WITNESS: That is the goal, and that -- and
6 that came from the employees. So this was -- our brand
7 promise was something that was -- you know, came from
8 the employees in the field and -- and it's -- it's
9 something that they identify with, something that we
10 promote, and we feel that whether residents or
11 employees, you know, they're all part of the Emeritus
12 family.

13 Q. BY MS. CLEMENT: Okay. So when you say,
14 "employees in the field," do you mean the line staff
15 that are caring for the residents?

16 A. Yes.

17 Q. And so when line staff that are caring for the
18 residents make complaints about the issues related to
19 the safety of the residents or quality of care, is that
20 something that Emeritus takes seriously?

21 A. Absolutely.

22 MR. REID: It's overbroad.

23 But go ahead.

24 THE WITNESS: Absolutely.

25 Q. BY MS. CLEMENT: And have you in response to

1 complaints and concerns -- strike that.

2 Have you done anything yourself personally in
3 response to complaints that line staff have made that
4 have reached corporate headquarters to investigate or
5 respond to those complaints?

6 A. I've not -- we have a -- we have a system and
7 process and people in place to respond to complaints
8 that come to corporate headquarters. If -- if I
9 receive anything in -- you know, regarding a concern or
10 a complaint, I would direct it to that system, our
11 Ethics First system, and the people that are in charge
12 of that.

13 Q. So my question was:

14 Have you personally ever done any investigation
15 regarding complaints made by Emeritus employees that
16 relate to the safety or quality of care for the
17 residents?

18 A. I'm not aware of any that have come to me
19 personally. So if -- if -- if one -- I can't think of
20 any off the top of my head, but if they -- if something
21 did come to me, I would have referred it to this Ethics
22 First process and allowed the people that are experts
23 in the various fields, so if it was a dietary issue or
24 a -- or a clinical issue or a, you know, transportation
25 issue or whatever the case may be, they would -- they

1 would refer it appropriately to the correct individual
2 to address it.

3 Q. And then did you request a report back from
4 whoever you delegated the concerns to to find out how
5 it had been followed up on?

6 MR. REID: It assumes facts not established,
7 calls for speculation.

8 THE WITNESS: First off, I'm not sure I've
9 actually, you know, forwarded a specific
10 resident-related complaint on to the Ethics First
11 program.

12 But I would not -- I would not specifically
13 follow up. I would -- I would trust that the
14 individual -- the individuals that are responsible for
15 that function would be following up and making sure
16 that it was addressed appropriately.

17 Q. BY MS. CLEMENT: And is it your understanding the
18 Ethics First process, that that Ethics First is housed
19 inside the Emeritus headquarters in Seattle?

20 A. Yes.

21 Q. And that the person responsible for that
22 Ethics First process reports to house counsel,
23 Ms. McKinnon?

24 A. Yes.

25 MR. REID: It's vague, overbroad.

1 Q. BY MS. CLEMENT: So your Ethics First process
2 which is whereby employees or families can use the
3 phone or e-mail or write in complaints or concerns
4 about resident safety or quality-of-care issues, that
5 those concerns go directly to the Legal Department; is
6 that correct?

7 MR. REID: It's vague as to time, and overbroad.

8 THE WITNESS: No. Actually, they -- they get
9 essentially triaged by this Ethics First group, and
10 they get directed appropriately to the individual that
11 can best -- that's in the best position to address the
12 issue.

13 Q. BY MS. CLEMENT: And the person that's triaging
14 is in the Legal Department, correct?

15 A. Could be because I think they do report up to
16 Janet, so, yeah.

17 Q. Do you recall receiving in October of 2000 --
18 let me rephrase that.

19 You get mail at Emeritus headquarters, correct?

20 A. Yes.

21 Q. And you have an office there, correct?

22 A. Yes.

23 Q. And you've had an office there since the merger
24 in 2007?

25 A. Correct.

1 Q. And when did you physically actually start
2 occupying the office?

3 A. In -- September 1st of 2007.

4 Q. And when you receive mail at Emeritus addressed
5 to you, would that mail come to you?

6 MR. REID: It's overbroad, and calls for
7 speculation.

8 THE WITNESS: The mail would go to my assistant.

9 Q. BY MS. CLEMENT: And did you share the same
10 assistant as Mr. Baty when you first started?

11 A. When I first started, there was a little bit of
12 overlap. I think -- I think I may have used Laura Head
13 for a -- for a brief period of time. Then I used
14 Teresa Franklin for a while. And so, you know, during
15 that period of time, it was one or the other of them.

16 Q. Do you -- did you are --

17 When mail would come addressed to you, it would
18 go directly to your assistant?

19 A. Yes.

20 Q. Did you give your assistant directions as to
21 what mail you wanted to read and what mail you did not
22 want to read?

23 A. Yes.

24 Q. And what direction did you give your assistants
25 with regard to mail you wanted to receive and mail you

1 did not want to read?

2 A. That basically that anything that they could
3 determine, you know, who was best to address whatever
4 it pertained to, that they should forward it to that
5 individual.

6 Q. So you let your assistant determine who would be
7 responding to your mail?

8 A. Yeah.

9 Q. Did you give her any guidelines --

10 A. Yes.

11 Q. -- with regard to what mail you wanted to look
12 at and what mail you wanted to have sent elsewhere?

13 A. Yes. I mean general guidelines in terms of, you
14 know, if it was -- if it was something that was unclear
15 as to, you know, what department should be in the best
16 position to address it, then, you know, she could bring
17 it by me and ask me, and I'd give her some guidance.
18 So if she was unsure about the nature of the letter,
19 then -- then it would be something that she would run
20 by me.

21 Q. Okay. Did you tell your assistant when you
22 first started working at Emeritus as the co-CEO that
23 you did not want to review any letters from
24 facility-level directors in which they had concerns
25 about patient safety or resident safety?

1 A. Not specifically.

2 Q. Did you tell your assistant that you did not
3 want to read letters from facility-level directors that
4 had concerns that there was not enough staff to cover
5 the day-to-day needs of the residents?

6 A. Not specifically.

7 Q. Did you tell your assistant that you did not
8 want to receive letters from facility-level directors
9 who had concerns about the way corporate was mandating
10 the buildings to be run?

11 MR. REID: It's vague and argumentative.

12 THE WITNESS: I did -- not to that specificity.

13 Q. BY MS. CLEMENT: Did you let your assistant know
14 that you didn't want to hear or see any communication
15 from facility-level employees about their concerns as
16 it related to the residents?

17 A. Not specifically.

18 Q. Did you ever --

19 Have you ever read a letter from an
20 Emerald Hills resident care director by the name of
21 Mary Kasuba?

22 A. No.

23 Q. From the date of her letter, October 12th, 2007
24 to today, have you ever read this letter?

25 A. No.

1 Q. We've marked as Exhibit 465 a notice of taking
2 your deposition.

3 A. Okay.

4 Q. Have you seen your deposition notice before just
5 now?

6 A. Yes, I have.

7 Q. And did you read through it?

8 A. Yes.

9 Q. And did you look for documents responsive to the
10 request?

11 A. Not extensively.

12 Q. What do you mean by that?

13 A. Well, if I had --

14 MR. REID: The question is overbroad.

15 But go ahead.

16 THE WITNESS: If I had something handy, I
17 brought it, but I didn't -- I -- some of these probably
18 exist somewhere, but I didn't have people go chasing
19 them down and try to, you know -- some of the stuff is
20 pretty broad, and there probably are documents that
21 exist or files that exist, but I don't have them in my
22 possession in a file.

23 Q. BY MS. CLEMENT: Do you as the CEO have the
24 ability to acquire any of these documents listed in the
25 notice?

1 MR. REID: The question is overbroad and vague.

2 THE WITNESS: I'm sure I could have people, like
3 I say, try to chase down -- whether it would be all of
4 them or not would be another question, but I could have
5 the people try to chase down some of them.

6 Q. BY MS. CLEMENT: Did you bring any documents with
7 you today responsive to the deposition notice?

8 A. Yes, I did. I brought the ones from one.
9 Everything I reviewed prior to the deposition.

10 Q. Okay. Do you want to hand those to me?

11 A. Okay.

12 MR. REID: Number three is in there, too, or
13 two.

14 THE WITNESS: Yes, this is in there.

15 MR. REID: He brought a little bio.

16 THE WITNESS: That's about the closest thing I
17 have to a resume.

18 Q. BY MS. CLEMENT: Is this off the website?

19 A. Yes.

20 Q. So to prepare for your deposition, you reviewed
21 the notice of entry -- strike that.

22 To prepare for your deposition, you reviewed the
23 order compelling you to appear today?

24 A. Correct.

25 Q. And you reviewed the January 19th, 2009

1 Wall Street transcript interview of yourself that's
2 been previously marked as Exhibit 361?

3 A. Correct.

4 Q. And you reviewed Plaintiffs' Mandatory
5 Settlement Conference Statement?

6 A. I kind of skimmed through that and the next one.

7 Q. The Defendants' Mandatory Settlement Conference
8 statement?

9 A. Yes.

10 Q. When you say you skimmed through it, what does
11 that mean?

12 A. I meant, yeah, I read it through very quickly
13 and didn't spend any real time. I wanted to get a
14 flavor for what the case was about.

15 Q. And did you read the court's order that was
16 contained in the Plaintiffs' Settlement Conference
17 Statement?

18 A. Court's order that was contained in the -- I'm
19 not sure what that is.

20 Q. It started on page four. It was the single
21 spaced type. The court's order regarding punitive
22 damages.

23 A. Again, I skimmed through it, got the gist of it.

24 Q. Have you read any deposition transcripts that
25 have been taken in this case?

1 A. I read the transcripts there of Ray Brandstrom.
2 Q. Anyone else's transcript that you've read?
3 A. No.
4 Q. Have you spoken to anyone about your -- about
5 their deposition testimony in this case?
6 A. No.
7 Q. Have you spoken to your sister, Melanie Werdel,
8 about her deposition?
9 A. No.
10 Q. And when did you read the documents that you
11 just handed to me now?
12 A. Yesterday.
13 MS. CLEMENT: Oh, Mr. Simon, I just wanted to
14 let you know that on the lunch break the videographer
15 let me know that we had spent approximately 20 minutes
16 on trips down the hall with counsel and Mr. Baty, and I
17 was wondering if you'd like to bring Mr. Baty back at
18 the end of our session here with Mr. Cobb to try to get
19 our full three hours that you've allocated for us.
20 MR. SMITH: Asking me?
21 MS. CLEMENT: Yes, sir.
22 MR. SMITH: My name is Smith.
23 MS. CLEMENT: Oh, I'm sorry.
24 THE WITNESS: Scott Smith.
25 MS. CLEMENT: I'm sorry.

1 MR. SMITH: That's fine.

2 MS. CLEMENT: I apologize.

3 MR. SMITH: The answer is no.

4 MS. CLEMENT: I just wanted to make that offer

5 to you while we were all here.

6 Q. Is there anything that you read yesterday that

7 made you want to go look at other documents or prompted

8 you to look at anything else?

9 A. Just what -- what was there in the file.

10 Q. Did you make any effort to determine if you had

11 any documents that you had ever authored, received, or

12 reviewed that relate to Joan Boice? It's item number

13 three.

14 A. Okay. Other than what was in there and, you

15 know, really communications with the attorneys, I -- I

16 don't have anything else.

17 Q. How about documents that you reviewed, authored,

18 or received from the time you first came onboard with

19 Emeritus through the present that relate to Emeritus at

20 Emerald Hills?

21 A. I have no documents specific to that community.

22 Q. Have you ever been to Emerald Hills?

23 A. No.

24 Q. Any documents --

25 Did you look for any documents at any -- that

1 related to concerns or complaints regarding the
2 California Division facilities, also known as the
3 West Division, since you've been at Emeritus?

4 A. No. Again, there -- there -- there could --
5 there could be documents that -- that, you know, relate
6 to California Division, but I don't have any in my
7 possession.

8 Q. When you of say you don't have any in your
9 possession, you mean that Emeritus doesn't have any
10 such documents or you in your own office didn't have
11 such documents?

12 A. I don't have anything responsive to that.

13 Q. Do you ever receive documents that in any way
14 outline or summarize concerns or complaints regarding
15 the California or West Division of Emeritus?

16 MR. REID: Vague and overbroad, and calls for
17 speculation.

18 THE WITNESS: I mean from time to time there
19 could be e-mails that -- that -- that, you know, talk
20 about, you know, from -- from Operations -- from my
21 chief operating officer that might talk about, you
22 know, certain things that they're -- they're working
23 on. But there's nothing specific, nothing that -- that
24 I would have saved or anything I can -- I can recall.

25 About the only thing I can recall is -- is when

1 they were going through the process of hiring a new
2 VP of Operations, and he updated me on the status of
3 that process a couple of times.

4 Q. BY MS. CLEMENT: And who was that?

5 A. Dale Boyles is who they hired. My chief
6 operating officer was Justin Hutchens and then
7 Chris Hyatt.

8 Q. So the only thing you remember ever receiving
9 that may have related to concerns, problems, or
10 complaints regarding the California Division since
11 you've been at Emeritus would be e-mails from
12 Chris Hyatt regarding the process of hiring Dale Boyles
13 as the new vice-president of Operations?

14 A. I believe so.

15 Q. Have you instructed your employees not to tell
16 you about complaints or concerns regarding
17 resident safety issues, quality-of-care issues in
18 Emeritus facilities?

19 A. No.

20 Q. Do you get any type of summary report about
21 ongoing safety issues or quality-of-care issues in the
22 Emeritus facilities?

23 MR. REID: That's vague and overbroad.

24 THE WITNESS: There's not a specific report
25 that -- that addresses those issues.

1 Q. BY MS. CLEMENT: When you say there's not a
2 specific report that addresses those issues, what do
3 you mean?

4 A. Well, there's -- there's -- there's not a --
5 there's not a report that I review that -- that talks
6 about quality issues in a specific, you know, community
7 or region or division.

8 Q. Do you review any reports that talk about
9 quality issues at Emeritus facilities?

10 A. We -- we look at some summary-level reports
11 about, you know, number of Ethics First complaints
12 or -- and I think they even -- they graph them into
13 categories for the whole company and -- and trend those
14 so that we have -- we have that measure.

15 I've seen reports that talk about regulatory
16 surveys, you know, numbers of regulatory surveys and
17 deficiencies.

18 And I've seen, you know, rolled-up reports that
19 talk about -- what are quality measures, CPR visits and
20 how many -- how many, you know, compliance with
21 orientations and trainings, and I can't think -- there
22 are a few others, but it's all -- it's all rolled up at
23 a company level and...

24 Q. Since you've been at Emeritus, have you been
25 receiving reports that show company-wide whether

1 line staff are getting orientations and state-mandated
2 trainings?

3 MR. REID: It's vague and compound.

4 MS. CLEMENT: I'll rephrase.

5 Q. Have you been receiving reports since you've been
6 at Emeritus that show across-the-board compliance with
7 Emeritus' own orientation for new line staff?

8 A. We -- we've just started receiving that type of
9 reporting because we -- we -- in the last year, we
10 shifted to an automated training platform called
11 Silver Chair. And it's capable of rolling up reports
12 and saying who's complied with the trainings and
13 whatnot. So just started being able to have that
14 capability.

15 Q. Has that been in 2012?

16 A. Yes.

17 Q. So when you were talking about these rolled-up
18 reports regarding compliance with orientation and
19 training, is that all the Silver Chair that started in
20 2012?

21 A. Yes. Yes.

22 MR. REID: Slow down just a little bit.

23 THE WITNESS: Sorry, okay.

24 Q. BY MS. CLEMENT: In 2007 to 2008, did you review
25 any summary-level reports that related to Ethics First,

1 regulatory surveys, quality measures?

2 A. I think I saw a report that indicated frequency
3 of -- of submissions of Ethics First into some broad
4 categories and then average time to resolve.

5 Q. Is Ethics First a program that's touted to the
6 employees as one which they -- they can make complaints
7 anonymously?

8 A. Yes.

9 Q. And is that exactly how it works, that the
10 complaints remain anonymous?

11 A. Yes, it's a third party that manages them.

12 Q. When you say, "It's a third party that manages
13 them," what do you mean?

14 A. Well, we contract with somebody who staffs the
15 call center. And then also -- somehow the interface
16 through the -- through the -- if they go online to make
17 a complaint, it stays anonymous.

18 Q. Are you sure about that?

19 A. Yes.

20 Q. And do you believe that when employees make
21 complaints on the Ethics First system that no one at
22 Emeritus knows who those employees are?

23 A. There's no way that anyone at Emeritus knows
24 unless they've -- unless they self-identify.

25 Q. Is the Ethics First hotline -- or strike that.

1 Is the Ethics First program something that
2 employees are told that they can report on this without
3 fear of retaliation?

4 A. Absolutely. Employees are always encouraged to
5 first try to approach their supervisor, but then this
6 is their -- their fall back if they can't get
7 satisfaction.

8 Q. And do you know of employees who have reported
9 through the Ethics First system and have then
10 subsequently been fired as a result of making
11 complaints about quality-of-care issues?

12 MR. REID: Assumes facts not established and is
13 argumentative.

14 THE WITNESS: I know of no such situation.

15 Q. BY MS. CLEMENT: Do you know of employees who
16 have been terminated after they have reported on the
17 ethics -- through the Ethics First program illegal
18 activities by Emeritus executives?

19 A. No.

20 MR. REID: Assumes facts -- assumes facts not in
21 evidence, argumentative.

22 Q. BY MS. CLEMENT: Do you get reports, since you've
23 been at Emeritus as the co-CEO, of deficiencies that
24 the states issue -- the licensing agencies issue
25 against Emeritus facilities?

1 A. No.

2 Q. Is there any level of deficiency that would come
3 to your attention as the co-CEO?

4 MR. REID: It's an incomplete hypothetical, may
5 call for speculation, lacks foundation.

6 Go ahead.

7 THE WITNESS: I -- I over -- over the course of
8 the last few years, I've been made aware of a couple
9 situations with communities where we've had some
10 serious issues from a regulatory standpoint that I can
11 recall. There was one in Florida off the top of my
12 head that rose to a level that -- that I came aware of
13 it.

14 But, generally speaking, it gets -- we've got,
15 you know, very qualified staff that address any of
16 those issues that arise right away, bring the resources
17 to bear and correct any issues.

18 Q. What was the issue in Florida that rose to the
19 level of actually you being notified of it?

20 A. It was an issue at a community and -- trying to
21 remember the name of the community now. It was in the
22 Orlando area of Florida. But -- but it -- it was -- it
23 was an issue that got -- ended up getting media
24 exposure. You know, it rose to a level that -- that I
25 became aware of it.

1 Q. Is that when you typically become aware of
2 deficiencies is once they get to the level of media
3 exposure?

4 A. No.

5 MR. REID: That's incomplete, lacks foundation,
6 incomplete hypothetical.

7 Go ahead.

8 THE WITNESS: No, there are -- there are other
9 circumstances that -- that if we feel we have a
10 significant either incident or -- you know, usually if
11 it involves something like, you know, significant
12 regulatory action or a ban on new admissions or
13 something that -- that is significant to that degree.

14 There was also one I recall in Pennsylvania that
15 I got involved with, too. So I mean from time to time
16 there have been -- there have been issues that -- that
17 have reached a level that I've gotten involved, not
18 very often.

19 Q. BY MS. CLEMENT: Going back to Florida, what was
20 the nature of the regulatory intervention in the
21 Orlando facility in Florida?

22 A. I believe they -- they did issue a fine and a
23 ban on new admissions for a period of time.

24 Q. And what was the underlying concern that led to
25 a ban on new admissions?

1 A. I believe there -- it had to do with -- with
2 concerns on the part -- on the part of the regulatory
3 agency. I don't remember specifically what the issues
4 were.

5 Q. Did it have to do with staffing?

6 A. I don't -- I don't recall.

7 Q. And in Pennsylvania, what was the concern that
8 rose to the level that you, as the CEO, got involved?

9 A. Had to do with physical -- the physical
10 construction of the properties.

11 Q. What was the outcome there?

12 A. We eventually reached an agreement with the
13 state that -- that was satisfactory all around.

14 Q. Have you received regulatory -- strike that.
15 Have you received notice of regulatory
16 violations that rose to the level where the state in
17 which Emeritus was operating the facility found that
18 Emeritus was operating in a facility without a license?

19 A. No.

20 Q. Have you been advised of regulatory intervention
21 in Emeritus facilities where the issue was Emeritus was
22 advertising dementia care when it did not have a
23 license to do so?

24 A. No.

25 Q. Have you received notice as the CEO of

1 regulatory intervention when Emeritus was found to be
2 admitting residents without the required physician's
3 report at the direction of corporate?

4 MR. REID: Objection, it assumes facts not
5 established, it's argumentative.

6 THE WITNESS: I've never received any notice to
7 that effect.

8 Q. BY MS. CLEMENT: You've never heard that there
9 were employees at Emeritus who were directed by the
10 Vice-President of Sales and Marketing, Angela Neale, to
11 go ahead and admit residents without the required 602
12 physician reports in California?

13 A. No.

14 MR. REID: I'm going to object that it assumes
15 facts not established, it's argumentative.

16 THE WITNESS: No.

17 Q. BY MS. CLEMENT: Would you consider that to be a
18 serious regulatory intervention if the state made a
19 finding that corporate was directing employees to admit
20 residents without the legally-required physician's
21 report?

22 MR. REID: The question is vague, argumentative,
23 overbroad, incomplete hypothetical, calls for
24 speculation, it assumes facts not established.

25 MS. CLEMENT: I'll rephrase.

1 Q. Is that a regulatory involvement that you would
2 want to know about if the state made a finding that
3 someone at corporate at Emeritus was directing facility
4 staff to admit residents without the required
5 physician's report?

6 MR. REID: The question -- it's an incomplete
7 hypothetical, it calls for speculation as to the
8 circumstances, it's overbroad, and vague, it lacks
9 foundation.

10 JUDGE CECIL: Objection is overruled.

11 You can answer the question.

12 THE WITNESS: I would -- I would want to know
13 what the circumstances could be that would, you know --
14 where a corporate employee would direct anybody to do
15 something that was outside of regulations or in
16 violation of regulations because it -- it's surprising
17 to me.

18 And -- and to -- I guess the second part of your
19 question is it would be -- it would be something that I
20 trust would be, you know, dealt with consistent with --
21 you know, with our policy. But it may not rise to my
22 level. Again, hypothetically, I don't know that...

23 Q. BY MS. CLEMENT: You don't know that what?

24 A. I don't know that anything occurred like you're
25 describing. I'm just saying hypothetically if that's

1 the case, it would be something that I would expect
2 that would be addressed.

3 Q. So no one --

4 Outside your attorneys, no one has ever told you
5 that the State of California actually issued a
6 deficiency or citation and made a finding that someone
7 at Emeritus corporate was instructing staff to go ahead
8 and admit residents without the required physician
9 reports in California?

10 MR. REID: The question is asked and answered,
11 it's compound, argumentative, vague, overbroad.

12 JUDGE CECIL: Overruled.

13 You can answer the question.

14 THE WITNESS: Repeat the question once more.

15 Q. BY MS. CLEMENT: Sure.

16 No one has ever told you that Emeritus received
17 a finding from the Department of Social Services in
18 California that someone at corporate was instructing
19 staff to go ahead and admit residents without the
20 required physician's reports?

21 A. No.

22 MR. REID: Assumes facts not established.

23 Q. BY MS. CLEMENT: Can you open up Exhibit No. 366.

24 (Discussion held off the record.)

25 THE WITNESS: Okay.

1 Q. BY MS. CLEMENT: And can you take a minute to
2 read that to yourself? It's a couple of pages, but
3 it's really not that much text.

4 A. Okay.

5 Q. Is it your understanding that when facilities
6 receive a complaint, investigation report, or
7 deficiency citation, any type of visit from the
8 Department of Social Services, they need to make a
9 report of that and deliver it to corporate
10 headquarters?

11 A. I'm not sure exactly what the process is, but
12 there is -- there's a process to have that -- have that
13 moved through the system.

14 Q. Okay. Would you defer to your sister,
15 Melanie Werdel's testimony and Budgie Amparo's
16 testimony about what happens with these documents?

17 A. Yes.

18 Q. And did you see that the allegation was that
19 this particular facility in Tracy was that the facility
20 was accepting residents without the, they call it,
21 602-A physician's report, and that corporate office was
22 directing the facility to admit without the physician's
23 report?

24 MR. REID: The document speaks for itself.

25 THE WITNESS: I -- I see what the document says.

1 Q. BY MS. CLEMENT: And that the state found that
2 there was sufficient information to deem the
3 allegations substantiated based upon interviews with
4 the facility staff who stated that a corporate
5 representative approved the practice of submitting
6 someone without a physician's report?

7 MR. REID: The question as phrased is hearsay,
8 it misstates the document, calls for speculation, it
9 lacks foundation, it's argumentative.

10 I would instruct him not to answer the question
11 as phrased.

12 JUDGE CECIL: Well, about 75 percent of the
13 objections relate to a document I haven't seen, so.

14 MS. CLEMENT: Would you like to see it?

15 JUDGE CECIL: It's a little difficult.

16 Perhaps the reporter could read back the
17 question.

18 (Reporter read back question.)

19 JUDGE CECIL: I don't know what the question is.
20 Perhaps it needs to be rephrased.

21 MS. CLEMENT: Okay.

22 JUDGE CECIL: In other words, there is no
23 question.

24 MR. REID: Right.

25 Q. BY MS. CLEMENT: Mr. Cobb, did anyone at Emeritus

1 let you know that there had been a report from the
2 Department of Social Services where they found that
3 someone from corporate was, in fact, advising Emeritus
4 staff in the California Division to go ahead and admit
5 residents without the required physician's report?

6 MR. REID: The question is asked and answered.

7 THE WITNESS: I think I already answered it.
8 The answer is no.

9 Q. BY MS. CLEMENT: Did you hear of any allegations
10 since you've been at Emeritus that Angela Neale, the
11 California vice-president of Sales and Marketing was,
12 in fact, advising staff, Sales and Marketing staff and
13 executive directors, to go ahead and admit residents
14 without the required physician's reports?

15 MR. REID: Asked and answered.

16 Go ahead.

17 THE WITNESS: No.

18 Q. BY MS. CLEMENT: How about Budgie Amparo, have
19 you ever been advised or learned that Budgie Amparo had
20 instructed sales staff to go ahead and fill the
21 buildings, and that he wanted heads in the beds, and it
22 was okay to go ahead and admit residents without the
23 required physician's reports?

24 MR. REID: Hold on. The question is compound,
25 it's vague, it's argumentative, it's speculative it's

1 overbroad.

2 MS. CLEMENT: I'll rephrase.

3 Q. Have you heard the term, "heads in the beds"?

4 A. I've heard the term.

5 Q. Is that jargon or slang to refer to getting --
6 filling the facilities with residents?

7 A. No.

8 MR. REID: Calls for speculation.

9 Q. BY MS. CLEMENT: You've never heard that term
10 used at Emeritus to refer to increasing occupancy?

11 A. I -- I've heard the term in the industry. I
12 don't think I've ever heard the term at Emeritus.

13 Q. When you say you've heard the term in the
14 industry, what do you mean?

15 A. Well, I've heard the term specifically relating
16 to skilled nursing in the long-term care industry. We
17 typically don't refer to beds in our -- in our company,
18 and so I've just -- I've not heard it in that context.

19 Q. Did you hire Budgie Amparo?

20 A. Yes.

21 Q. And you know he came from the skilled nursing
22 background?

23 A. Yes.

24 Q. What were Budgie Amparo's qualifications that
25 made you want to hire him?

1 A. He was -- came from Kaiser where he had opened a
2 very large -- I think their first skilled nursing
3 facility somewhere in the San Francisco Bay Area, and
4 he had tremendous nursing experience with Kaiser and I
5 can't remember prior to Kaiser. But he struck me as
6 somebody who was very passionate, and somebody who was
7 extremely knowledgeable. And we needed -- at the time
8 it was Summerville. We needed a -- someone to oversee
9 our kind of clinical services component of the
10 business.

11 Q. And you found Budgie Amparo to be extremely
12 knowledgeable as it relates to clinical nursing?

13 A. Yes.

14 Q. And what did you base that on?

15 A. He's an RN by background. He's got some other
16 letters after his name. I can't remember exactly what.
17 But he -- he's very knowledgeable about -- about
18 nursing, and he has management expertise, which many
19 nurses do not have in their training. They don't train
20 nurses to be managers, per se, but -- but Budgie had
21 the management experience, which made him very
22 qualified.

23 Q. And by management experience, do you mean risk
24 management experience?

25 A. No, I mean operations management experience. If

1 you're running a large skilled nursing facility for a
2 hospital, you're managing an awful lot of people.

3 Q. When you say --

4 Do you know how many times it took Budgie Amparo
5 to pass the Boards in California to become an RN?

6 MR. REID: Objection, it's irrelevant.

7 THE WITNESS: I have no idea.

8 Q. BY MS. CLEMENT: Do you know where he got his
9 schooling to become an RN?

10 MR. REID: It's also irrelevant.

11 THE WITNESS: I don't remember.

12 Q. BY MS. CLEMENT: And the letters behind his name,
13 you understand he has a master's degree in nursing?

14 A. I don't recall specifically what his degrees
15 are.

16 Q. Did you inquire as to what his qualifications
17 were when you hired him?

18 A. Yes, but that was a long time ago.

19 Q. Did Budgie have his master's degree in nursing
20 at the time you hired him in Summerville?

21 MR. REID: Lacks foundation.

22 THE WITNESS: I can't recall.

23 Q. BY MS. CLEMENT: What's your understanding of
24 what Mr. Budgie Amparo's role is today at Emeritus?

25 A. He oversees our -- our Quality Services

1 department. So he's -- he's focused on, you know,
2 all -- all of our quality service oversight reports up
3 eventually through him. So at the regional oversight,
4 the regional director of Quality Service reports to a
5 VP of Quality Service, which reports to Budgie.

6 Q. Do you understand his title is executive
7 vice-president of Quality Services and Risk Management?

8 A. Yes.

9 Q. And what risk is Mr. Amparo managing for
10 Emeritus?

11 MR. REID: It's vague and overbroad.
12 Go ahead.

13 THE WITNESS: He -- he's --

14 MS. CLEMENT: Well, let me rephrase.

15 THE WITNESS: Okay.

16 Q. BY MS. CLEMENT: To your understanding as the
17 CEO, what risk is Budgie Amparo managing on behalf of
18 Emeritus?

19 MR. REID: It's vague and overbroad.

20 JUDGE CECIL: Overruled.
21 You can answer the question.

22 THE WITNESS: He is involved in really the
23 preventative side of -- of -- of risk to residents and
24 employees for that matter.

25 So our incident reporting that happens at the

1 communities rolls up through a department that reports
2 to -- that he oversees. And then, you know, that --
3 that involves -- you know, they look for trends. They
4 look for incidents that need follow up and that sort of
5 thing, and they -- they get involved with that process.

6 Our Workers' Comp injury reporting rolls up to a
7 department that then -- is under his supervision, and
8 he follows up on the -- any -- any type of trending or
9 that -- with respect to Workers' Comp injuries. And
10 our safety experts in the field report to Budgie.

11 And he's involved with -- he developed the --
12 our CPR tool, our Comprehensive Process Review, which
13 is basically our self-evaluation tool which tries to
14 identify any areas where we can improve on our
15 operations.

16 He's -- I mean there's a lot of overlap between
17 the kind of quality improvement piece and the risk
18 management piece. They kind of go hand in hand. So
19 he -- he -- he's involved with -- with all of those
20 kind of preventative processes.

21 Q. BY MS. CLEMENT: So the risk management that
22 Mr. Amparo is responsible for is to prevent injuries to
23 the residents; is that what you mean when you say
24 preventative side of risks to the residents?

25 MR. REID: Objection, it misstates his

1 testimony.

2 THE WITNESS: He --

3 MR. REID: It's asked and answered. He just
4 answered the question.

5 Go ahead and answer the question again.

6 MS. CLEMENT: No, you've got to stop doing that.
7 We go through this every time. You can't be, you know,
8 coaching the witness on the record. You just need to
9 have legal objections, and that question had not been
10 asked before.

11 MR. REID: He just described --

12 MS. CLEMENT: We don't need anything but legal
13 objections. It's --

14 MR. REID: Well, then let me ask for a ruling.

15 JUDGE CECIL: Objection sustained. It's asked
16 and answered.

17 Q. BY MS. CLEMENT: When you say that Budgie Amparo
18 is managing risk on the preventative side, what does
19 that mean?

20 MR. REID: It's asked and answered.

21 Could we have a ruling, your Honor?

22 JUDGE CECIL: Sustained.

23 Q. BY MS. CLEMENT: Does the preventative side of
24 risk to resident that you indicated Mr. Amparo is
25 responsible for include the risk of residents suffering

1 injuries at Emeritus facilities?

2 A. The -- the preventative side is making sure that
3 we -- our systems and procedures and training and --
4 are sufficient to -- to try to minimize risk to
5 residents and employees both.

6 MR. REID: We've been going for an hour and ten
7 minutes. Is it an appropriate time for a break?

8 MS. CLEMENT: Does this mean I get the minutes
9 back on my three hours?

10 MR. REID: I guess -- I don't know. Are we -- I
11 didn't know we were keeping a tally of --

12 MS. CLEMENT: Well, apparently we were keeping a
13 tally, as we found out from Mr. Baty. So I'm just
14 asking you a question. Do I get my minutes back that
15 you take on the trips down the hall?

16 MR. REID: Well, you take breaks also. And the
17 record may not reflect, but we sat here during the
18 first deposition, and everyone was here except for you
19 for several of those minutes that you're complaining
20 about. So --

21 JUDGE CECIL: Why don't we take a ten-minute
22 break?

23 MR. REID: Thank you.

24 THE VIDEOGRAPHER: Going off the record at
25 2:08 p.m.

1 (Break taken in proceedings.)

2 THE VIDEOGRAPHER: We are back on the record at
3 2:25 p.m.

4 Q. BY MS. CLEMENT: Do you know who Lisa Hulse is?

5 A. Yes.

6 Q. And she worked for you at Summerville?

7 A. Yes.

8 Q. Did she work for you at Cobb Co?

9 A. No, I don't believe so, no.

10 Q. Who came to work for you first, Lisa Hulse or
11 Budgie Amparo?

12 A. I don't recall.

13 Q. Did you hire Lisa Hulse or did someone else?

14 A. Someone else did.

15 Q. When did Lisa Hulse start working at Emeritus?
16 I know the merger officially took place September 1st
17 '07, but was she in place prior to that?

18 MR. REID: Lacks foundation.

19 THE WITNESS: I don't believe so. She came over
20 from Summerville.

21 Q. BY MS. CLEMENT: Do you have any knowledge as to
22 why Lisa Hulse would have been authoring reports and
23 sending them to Mr. Amparo regarding Emeritus prior to
24 September 1st, 2007?

25 A. Well, I think we announced the merger in May of

1 '07 or June of '07, and so it's possible that some of
2 our staff began -- some of our Summerville staff began
3 doing, you know, some work together with some of the
4 Emeritus staff, but that's just speculation. I'm not
5 sure.

6 Q. As part of making sure that there are systems,
7 procedures, and training sufficient to reduce risks to
8 the residents, does that include risk of media exposure
9 to Emeritus?

10 MR. REID: It's vague and speculative.

11 JUDGE CECIL: Overruled.

12 You can answer the question.

13 THE WITNESS: I think that media exposure kind
14 of moves under a different area. It moves under our
15 communications folks, and they get involved when they
16 think there's potential for media exposure, and that
17 moves -- that moves under them. Budgie is not involved
18 in that type of risk.

19 Q. BY MS. CLEMENT: Would risk of residents
20 requesting their records, is that part of Emeritus'
21 systems, procedures, and trainings to reduce risk to
22 residents?

23 A. I don't -- I don't know that I would classify it
24 as -- as reducing risks to residents, no.

25 Q. Can you think of any reason why residents

1 requesting their records would be a risk management
2 issue as you've defined it for the Quality Services
3 team?

4 MR. REID: I think it may misstate his
5 testimony, lacks foundation.

6 Go ahead.

7 THE WITNESS: I would expect that if -- if
8 residents or -- or if anyone requested resident
9 records, that we would have somebody take a look at
10 what we were providing just to evaluate what the --
11 what the record is. You know, if there's -- if there's
12 an issue we should be addressing or -- or -- I think
13 it's just prudent that we should know what we're --
14 what we're sending out.

15 Q. BY MS. CLEMENT: Do you know that it's Emeritus'
16 policy that before a resident's records are released to
17 them or their family, that Emeritus requires the
18 facility to send the records to Legal in Seattle and
19 then the Legal Department determines what records the
20 resident or their family will receive?

21 A. I think that's --

22 MR. REID: Hold on just a second.

23 I think the question misstates the evidence.

24 Go ahead.

25 THE WITNESS: I think that's prudent given all

1 of the HIPAA regulations and everything that -- that
2 we're held accountable to, I think we should be very
3 careful on what resident information we release and to
4 whom and to make sure they have a valid right to it.

5 Q. BY MS. CLEMENT: Do you know of any state
6 agencies quarrelling with Emeritus' policy of refusing
7 to release resident records until Legal Department has
8 decided what records the resident will receive?

9 A. Was that what I just spoke to? Or say that
10 again.

11 Q. Sure.

12 Do you know of any of the regulatory agencies --

13 A. Okay.

14 Q. -- that oversee Emeritus --

15 A. Uh-huh.

16 Q. -- having a concern regarding Emeritus' policy
17 of refusing to release the resident's records to the
18 resident or their family until the Legal Department has
19 made a decision as to what records that resident or
20 their family will receive?

21 MR. REID: The question is argumentative as
22 phrased, it assumes facts not established.

23 JUDGE CECIL: The objection is overruled.

24 You can answer the question.

25 THE WITNESS: I think the regulatory agencies

1 would applaud our efforts to ensure that we're not
2 releasing resident information indiscriminately to
3 someone who is not entitled to it. I mean the -- the
4 HIPAA regulations are very specific in terms of, you
5 know, who has access to medical information regarding
6 residents.

7 Q. BY MS. CLEMENT: Are you personally --
8 Have you personally read the HIPAA Act?

9 A. I have not read the full HIPAA Act.

10 Q. I hear people say that a lot, but frankly I find
11 most people don't actually know what it says, so it's
12 just a personal survey I'm taking on my own.

13 What about risk of regulatory exposure, is that
14 a part of Emeritus' systems, procedures, and training
15 to make sure that there is a lessened risk to residents
16 for injury?

17 MR. REID: The question is vague.

18 THE WITNESS: I -- I mean one of the -- the
19 tools that specifically addresses that is the CPR tool
20 where we try to ensure that all of our systems across
21 all of our departments are performing as they should
22 and identifying any areas that we can improve on.

23 MS. CLEMENT: Move to strike as nonresponsive.

24 JUDGE CECIL: Motion is denied.

25 Q. BY MS. CLEMENT: The CPR is not regulatory

1 exposure, correct?

2 A. The CPR is to prevent regulatory exposure. I
3 mean it takes all of the regulations of the state, and
4 it layers on all of Emeritus' standards, which are in
5 addition to that, and we have a team come in and survey
6 the community and see if they're up to standard in all
7 of those areas. So it most definitely is addressing
8 the potential for regulatory exposure.

9 We pass the CPR with flying colors, chances are
10 we are going to pass any regulatory survey because our
11 standards tend to be, at a minimum, at the state
12 regulatory level and in some cases above that.

13 Q. When you say "your standards," do you mean your
14 policies and procedures?

15 A. It's a combination. It could be -- it could be
16 policies. It could be procedures, you know, practices.
17 You know, it's -- generally speaking, though, we
18 operate in a fashion that is above the minimum level
19 dictated by regulation.

20 Q. And when you say you operate in that fashion, is
21 that what you're saying your intent is?

22 A. Yes.

23 Q. You don't actually track reports about the --
24 how the operations are working out in realtime,
25 correct?

1 A. Not on a -- on a -- you're talking about a
2 community-by-community basis?

3 Q. No, I mean across the board, you are not
4 tracking in your job as the CEO, you're not looking at
5 complaints, CPR results, things like that which would
6 show that perhaps Emeritus is not meeting its own
7 standards?

8 MR. REID: The question is compound and
9 argumentative as phrased.

10 THE WITNESS: I'm not tracking that.

11 Q. BY MS. CLEMENT: And you actually don't look at,
12 for example, complaints from facility-level staff that
13 would indicate, if you'd investigated them, that
14 perhaps Emeritus wasn't meeting its own standards in
15 its facilities, correct?

16 MR. REID: Asked and answered.

17 THE WITNESS: We have a whole oversight
18 structure in place to be doing just that, to be
19 reviewing that and responding to -- to anything that
20 has surfaced in that regard.

21 As the CEO, no, I'm not looking at those
22 individual reports.

23 Q. BY MS. CLEMENT: Well, you actually personally
24 don't know whether, in fact, there is any investigation
25 into the complaints made by the staff at the facility

1 level, correct?

2 A. I don't have firsthand knowledge with respect to
3 a specific complaint or concern.

4 Q. So you don't know if, for example, complaints by
5 executive directors, resident care directors, regional
6 directors, vice-presidents of Operations in your
7 California Division have, in fact, ever been
8 investigated, true?

9 MR. REID: Objection, it's compound, it's
10 argumentative, it misstates his testimony, it's
11 overbroad.

12 MR. SMITH: And it's been asked and answered
13 multiple times.

14 JUDGE CECIL: The objection is sustained.

15 Q. BY MS. CLEMENT: Let me ask you this:

16 Do you know if there's ever been, since you've
17 been at Emeritus, complaints made by executive
18 directors regarding quality of care and safety issues
19 at Emeritus facilities in the California Division?

20 MR. SMITH: Same objections.

21 MR. REID: Same objections.

22 JUDGE CECIL: Overruled.

23 You can answer the question.

24 THE WITNESS: In the course of my normal duties
25 as CEO, I'm not aware that there have been complaints

1 by executive directors in the California Division.

2 I mean in conjunction with this -- this
3 litigation, I understand there have been, but that's --
4 but I'm not aware of any others.

5 Q. BY MS. CLEMENT: When you say, "in conjunction
6 with this litigation," what do you mean?

7 A. Well, there was --

8 MR. REID: To the extent that the question
9 impedes upon the attorney/client privilege, don't
10 provide information that you've obtained from counsel.
11 Separate and apart from information you've obtained
12 from counsel, you can answer the question.

13 THE WITNESS: What about the -- the couple of
14 things that I read?

15 MR. REID: Okay.

16 THE WITNESS: Okay. So just in skimming through
17 the -- the two arbitration briefs, I'm not sure what
18 they're called, I saw that there was a complaint by an
19 executive director.

20 Q. BY MS. CLEMENT: And was that executive director
21 Lillian Blanco out of Texas?

22 A. I don't know who Lillian Blanco is.

23 Q. Lillian Blanco was an executive director in
24 Texas who in 2007 wrote e-mails to corporate about
25 serious concerns she had regarding staffing, and

1 training, and safety of the residents. You've never
2 heard of that name?

3 A. Uh-huh.

4 Q. Is that no?

5 A. Huh?

6 Q. Is that no?

7 A. That's a no.

8 Q. Did you read about a resident care director by
9 the name of Mary Kasuba having complaints that she made
10 to corporate regarding resident safety issues?

11 A. Yes.

12 Q. How about Dorothy Ting, she was an executive
13 director at Rancho Solano, do you recall Dorothy Ting
14 making complaints regarding safety issues of the
15 residents in that California facility?

16 MR. REID: The question assumes facts not
17 established.

18 THE WITNESS: Dorothy Ting's name sounds
19 familiar to me, but I don't recall why. I don't -- I
20 don't recall her making complaints regarding our
21 Rancho Solano community.

22 Q. BY MS. CLEMENT: Do you recall reading about or
23 hearing about -- strike that.

24 Do you recall learning, other than from your
25 attorneys, regional directors in California expressing

1 concerns they had to corporate about safety issues for
2 the residents?

3 A. No.

4 Q. The policies and standards that you referenced
5 that Emeritus has, do you expect those to be complied
6 with in your facilities?

7 MR. REID: That's overbroad.

8 THE WITNESS: We use our -- our, you know, best
9 efforts to -- to try to have all communities complying
10 with those standards, recognizing that, you know, it's
11 possible that -- that they may not be complying
12 100 percent all of the time, but, again, also
13 recognizing that those standards tend to be higher
14 standards than what is required by state regulatory
15 agencies. So -- so it's -- there's a continual, you
16 know, effort and focus to try to achieve that
17 100 percent compliance.

18 Q. BY MS. CLEMENT: Can you think of any standards
19 in particular that are higher than those required by
20 the state regulatory authorities?

21 A. You know, it varies state by state. So, you
22 know, in any given state, I'm not sure where we stand
23 relative to the regulatory requirements, and so I can't
24 think of any off the top of my head.

25 Q. So why do you say that Emeritus standards are

1 higher than those required by state regulators?

2 A. Because I've been told that on numerous
3 occasions.

4 Q. By whom?

5 A. Well, by our own operating people. It's been
6 passed along by state regulators from time to time, so
7 I -- I believe that -- that to be -- I trust that
8 that's the case.

9 Q. Can you think of a single person who -- identify
10 a single person who told you that Emeritus' standards
11 were higher than those required by state regulators?

12 A. I know I've been told that by Chris Hyatt in --
13 in certain circumstances. I've been told that by
14 Budgie Amparo in certain circumstances, by, you know,
15 Chris Belford and Chris Guay, who are senior VPs of
16 Ops.

17 Q. So Chris Hyatt, when he told you this, was he
18 the chief operating officer?

19 A. Yes.

20 Q. And Chris Belford and Chris Guay, when they told
21 you this, they were senior vice-presidents of
22 Operations?

23 A. Yes.

24 Q. So in '07 and '08 when you first came -- the
25 first year that you were onboard, Mr. Hyatt

1 Mr. Belford, and Mr. Guay were all vice-presidents of
2 Operations at different divisions of the company,
3 correct?

4 A. Yes.

5 Q. So when you first started with the company in
6 the first, say, year or so that you were with the
7 company, did anyone at Emeritus tell you that Emeritus'
8 standards were higher than those required by state
9 regulators?

10 A. I know I've been told that. It's -- it's not
11 even -- well, I know I've been told that from, you
12 know, the beginning, at the time that the merger
13 occurred and -- and, you know, by Justin Hutchens at
14 the time. I've been told that by executive directors
15 in different communities when I've visited. So it's --
16 it's a -- I'm pretty comfortable that that's the case.

17 Q. Have you ever been told that by any
18 vice-president of Operations -- strike that.

19 Mr. Hyatt, Mr. Belford, and Mr. Guay were not
20 VPOs of California at the time that you had these
21 conversations with them about the standards being
22 higher than those of the state regulations?

23 A. Are we talking about California now, or are we
24 talking about the whole country?

25 Q. Now, we're talking just about California.

1 A. Okay.

2 Q. So Mr. Hyatt, Mr. Belford, and Mr. Guay when
3 they told you that their standards were -- Emeritus'
4 standards were higher than those of state regulations,
5 they weren't referencing California?

6 A. No, it was a general statement.

7 Q. Has anyone ever told you that Emeritus'
8 standards or policies are higher than what's required
9 by the California Title 22 regulations?

10 MR. REID: Separate and apart from counsel, you
11 can answer the question, information you received from
12 your attorneys.

13 THE WITNESS: I can't specifically recall. I
14 believe it to be the case, but I can't specifically
15 recall why I believe that to be the case and who --
16 who's told me of that.

17 Q. BY MS. CLEMENT: To your understanding -- strike
18 that.

19 Have you ever spoken with any state regulator in
20 California who's told you that Emeritus' policies or
21 standards are higher than the Title 22 regulations or
22 the Health and Safety Codes?

23 A. I don't believe I've spoken with the state
24 regulator in California since the merger, that I can
25 recall.

1 Q. Do you recall ever having a conversation with
2 anyone from the Department of Social Services,
3 Community Care Licensing in which they told you that
4 Emeritus' policies or standards were more stringent or
5 higher than the state regulations?

6 MR. REID: The question is asked and answered.

7 THE WITNESS: I don't recall even speaking with
8 the state regulators regarding Emeritus.

9 Q. BY MS. CLEMENT: Would you --

10 Now, Emeritus actually prints out their policies
11 and standards, correct?

12 MR. REID: It's overbroad and vague.

13 THE WITNESS: They're available on our intranet.

14 Q. BY MS. CLEMENT: And what's the purpose of having
15 these policies or standards, these written policies and
16 standards?

17 A. To give guidance to the -- the communities and
18 regionals in terms of setting forth the standards for
19 operations.

20 Q. So in lay terms, could we say that these
21 policies Emeritus publishes are -- it's the playbook
22 that Emeritus expects their facilities to operate by?

23 A. Well --

24 MR. REID: It's vague.

25 THE WITNESS: They're guidelines, certainly.

1 Not every policy may be, you know, pertinent in every
2 instance or in every community but -- but they are --
3 they are there if -- if communities are looking for
4 guidance on how to deal with the particular area or
5 what the -- what the standard is for something, they're
6 available to them.

7 They're more of a tool for the leadership of the
8 communities at the local level. I mean this is a very
9 local business, and every community is a little bit
10 different. And so we -- we leave it up to our -- our
11 local leadership, our executive directors and our
12 regional directors, to use judgment relative to -- to
13 which policies and procedures and systems are
14 appropriate for their individual communities and
15 what -- what might be appropriate for one, may not be
16 appropriate for another.

17 Q. BY MS. CLEMENT: Isn't it true that Emeritus at
18 the merger expected -- at the time of the merger
19 expected the communities to learn the new systems that
20 the new Emeritus company put out there for them?

21 A. Certain systems we brought from Summerville. So
22 those communities that were not Summerville, that were
23 legacy Emeritus, if you will, we rolled out some new
24 systems, too.

25 Q. Those were sales and marketing systems?

1 A. We rolled out a sales and marketing system, and
2 we rolled out a resident evaluation and care planning
3 system.

4 Q. And that was the Vigilant system?

5 A. Yes.

6 Q. And you also actually had a person who was
7 assigned to be responsible for the integration of the
8 policies of Summerville and Emeritus and put those in
9 place, correct?

10 A. Might have had more than one, but -- but, yes,
11 we had -- we had someone in place to try to integrate
12 all of the policies and make sure they were accessible
13 to everybody.

14 Q. Okay. And the Emeritus policies that were in
15 place were expected to be carried out until that
16 integration of all of the policies was complete,
17 correct?

18 MR. REID: It's vague, and argumentative, and
19 overbroad, and misstates his testimony.

20 THE WITNESS: I -- I would -- I think that is a
21 question that would be a little bit on a case-by-case
22 basis. And, again, leaving some discretion to
23 executive directors, regional directors, you know, VPs
24 in terms of their situation, their comfort, how fast
25 they rolled out new systems, how they staged

1 integration. There -- it wasn't -- it wasn't, you
2 know, blanket across the country. It was -- it was
3 done over -- over a period of time in different --
4 there was different sequencing and staging in different
5 areas with respect to that.

6 So I'm not sure it if -- if there were questions
7 regarding the appropriate policies, that would be
8 something that would need to be surfaced to the
9 regional directors or VPs in order to get the proper
10 direction.

11 Q. BY MS. CLEMENT: Did you as a CEO expect the
12 Emeritus facilities to follow the Emeritus policies
13 that were available on the Emeritus website?

14 MR. REID: It's asked and answered, it's vague
15 as to time, and overbroad.

16 JUDGE CECIL: Sustained.

17 Q. BY MS. CLEMENT: When you came onboard in 2007 in
18 that first year that you were there, did you expect the
19 Emeritus facilities to comply with the policies that
20 were available to the facilities on the intranet site?

21 MR. REID: It's asked and answered.

22 JUDGE CECIL: Sustained.

23 Q. BY MS. CLEMENT: Is it your -- let me ask you a
24 different question.

25 When you say it's a very local business, the

1 facilities, are you saying that the facilities are
2 autonomous from Emeritus corporate?

3 A. No.

4 Q. So the money that comes in the door from the
5 resident's care, where does that money go in the
6 local -- the resident lives in the local facility,
7 money comes in the door for that resident's care, where
8 does that money go?

9 A. It goes into a bank account for that particular
10 community, and then it gets worked into our cash
11 management process.

12 Q. Isn't it true that money from all Emeritus
13 facilities, since you've been with the company, get
14 swept up to a corporate account?

15 A. I believe that's the case.

16 Q. And, in fact, at the local facility level, since
17 you've been with the company, they don't even have
18 their own bank account?

19 A. I believe that's the case. They have P cards.

20 Q. And when you say, "They have P cards," that's a
21 purchase order card that they can use for a set dollar
22 amount?

23 A. Yes.

24 Q. And do the facilities get to write their own
25 policies and procedures?

1 MR. REID: It's overbroad, incomplete
2 hypothetical.

3 THE WITNESS: In certain circumstances, they
4 will submit -- they'll write a policy and procedure and
5 submit it, and typically we'll approve it. Sometimes
6 communities have specific needs that we don't have
7 across -- that are not commonplace across our other
8 communities.

9 Q. BY MS. CLEMENT: Do you know of any California
10 facilities that have done so?

11 A. No.

12 Q. Have you ever had any responsibilities with
13 respect to quality of care?

14 MR. REID: It's vague.

15 THE WITNESS: I think -- with respect to quality
16 of care, I -- that's part of my, you know,
17 responsibility to ensure that we're delivering a
18 quality product and that we're delivering quality
19 services.

20 Q. BY MS. CLEMENT: Going back to this risk
21 management issue as it relates to the residents, how
22 about risk of residents moving out of the facility, how
23 does that relate to Emeritus' concern that systems,
24 procedures, and trainings are in place to protect the
25 residents?

1 MR. REID: The question is argumentative as
2 phrased, it assumes facts not established, it's also
3 vague.

4 JUDGE CECIL: Sustained.

5 Q. BY MS. CLEMENT: Do you believe that risk of
6 residents moving out is part of the Emeritus risk
7 management program as it relates to the residents?

8 MR. REID: It's vague.

9 THE WITNESS: I don't consider -- I don't
10 consider residents moving out part of the risk
11 management program, other than, you know, if -- we make
12 an attempt to try to determine the reasons for resident
13 move-outs, and if there's a pattern of, you know,
14 satisfaction issues or issues along those lines, then
15 it would be something that we would need to -- we would
16 want to make sure was identified, and we could address
17 it. So -- but I don't -- I don't consider that a part
18 of the risk management function, per se, more of a
19 quality function.

20 THE VIDEOGRAPHER: This ends tape number one of
21 the deposition of Lewis Granger Cobb. We are going off
22 the record at 2:56 p.m.

23 (Break taken in proceedings.)

24 THE VIDEOGRAPHER: We are on the record at
25 3:00 p.m. The date is October 30th, 2012. This begins

1 tape number two of the deposition of Lewis Granger Cobb
2 in the case of Boice versus Emeritus.

3 Q. BY MS. CLEMENT: Are you familiar the term used
4 at Emeritus called, "Close the back door"?

5 A. Yes.

6 Q. And what does that term mean?

7 A. They -- it refers to trying to do everything we
8 can in situations where residents want to stay with us,
9 families want their -- their loved one to stay with us,
10 to be able to keep them.

11 Q. Did you hear about Jayne Sallerson's idea
12 regarding closing the back door to have families come
13 into the facility for a, quote, training, close quote,
14 session on how to care for their loved ones to deter
15 them from moving out?

16 MR. REID: The question as phrased is
17 argumentative, it assumes facts not established.

18 THE WITNESS: I think -- I mean if there was a
19 program, it would be how to educate families to help
20 them to keep -- like I say, families usually want their
21 loved ones to stay with us as long as possible, as
22 opposed to skilled nursing and varying institutional
23 environments. So we try to work with the families and
24 do all we can to -- to, you know, accommodate that
25 within the scope of the regulations and within the

1 scope of our ability to care for residents.

2 Q. BY MS. CLEMENT: Did you hear about
3 Jayne Sallerson's idea regarding closing the back door
4 is to have families come into the community for, quote,
5 training, close quote, on how to care for loved ones to
6 deter them from moving out?

7 MR. REID: Again, the question is argumentative,
8 it assumes facts not established, it's now asked and
9 answered.

10 JUDGE CECIL: He's answered the question.

11 MS. CLEMENT: In reading his answer to the
12 question, he didn't --

13 JUDGE CECIL: He said no.

14 MS. CLEMENT: Could I ask the reporter to read
15 his answer?

16 JUDGE CECIL: Sure. Maybe we'll have a conflict
17 between the camera and the court reporter.

18 (Reporter read back answer.)

19 JUDGE CECIL: You can keep reading.

20 THE REPORTER: That was it. That was the last
21 of it.

22 JUDGE CECIL: You asked the question again, and
23 there was an objection.

24 MS. CLEMENT: There was an asked and answered
25 objection, but I don't think the answer was responsive

1 to my question, which was:

2 Did he know about Jayne Sallerson's program?

3 JUDGE CECIL: Okay. Let me just tell you what I
4 heard.

5 MS. CLEMENT: Okay.

6 JUDGE CECIL: You asked the question again
7 because he didn't answer it the first time.

8 MS. CLEMENT: Right.

9 JUDGE CECIL: And as counsel was objecting to
10 your question, he said no.

11 MS. CLEMENT: Oh, I didn't hear that, sorry.

12 JUDGE CECIL: And that's the reason why I said
13 what I said.

14 MS. CLEMENT: Oh, and the court reporter didn't
15 get it either. So can I ask it so we can get a clear
16 question and answer?

17 Sorry, because when lawyers talk over, then
18 sometimes the court reporter doesn't get it, and then
19 we can't use the video either. That's the problem.

20 Q. Were you aware of a new initiative Emeritus put
21 in place to close the back door by Jayne Sallerson to
22 have families come into Emeritus facilities for a
23 quote/unquote training on how to care for their loved
24 ones to deter them from moving out?

25 A. No.

1 MR. REID: The question --

2 THE WITNESS: We will get there.

3 MR. REID: The question assumes facts not
4 established and is argumentative.

5 JUDGE CECIL: The objection is overruled, and
6 he's answered the question.

7 THE VIDEOGRAPHER: Can we get a clear answer,
8 though?

9 MR. REID: Go ahead and say it.

10 THE WITNESS: No.

11 Q. BY MS. CLEMENT: At any time did you come to the
12 conclusion that there were problems in leadership in
13 California that were affecting its performance?

14 A. Actually, yes. I know that there were concerns
15 about Catherine Ratelle and her leadership as the VP of
16 Operations in California.

17 Q. And did Chris Hyatt tell you he wanted
18 Ms. Ratelle to be fired as the VP of Operations?

19 A. I think it was Justin Hutchens at the time that
20 came to me and said he felt we needed to make a change.

21 That's correct? Wait a minute. I get my COOs
22 mixed up.

23 Q. Had Justin --

24 A. No, I believe it was Chris Hyatt that came to me
25 and said we need to make a change.

1 Q. Chris Hyatt asked you to terminate
2 Catherine Ratelle, correct?

3 A. I volunteered to go down and have a conversation
4 with her because of our longstanding relationship.

5 Q. And she was terminated, correct?

6 A. She was.

7 Q. And that was -- termination was a result of what
8 Emeritus felt was poor financial performance by the
9 California or West Division?

10 A. I think that the termination was a result of a
11 lack of effective leadership. It involved much more
12 than, you know, just boiling it down to financial
13 performance.

14 Q. Isn't that how Chris Hyatt boiled it down, to
15 lack of -- was poor financial performance by
16 Ms. Ratelle?

17 A. Financial performance is an output of doing a
18 really good job in a whole bunch of other areas. If
19 you do a very good job at delivering care and service,
20 the result is higher occupancy, good -- good word of
21 mouth, good reputation, being able to charge a fair
22 price for the product that you're providing. The
23 financial metrics kind of take care of themselves.

24 Usually if there's a problem with a sustained
25 deterioration on the financial metrics, there are

1 quality problems, there are other problems that need to
2 be addressed, or staffing issues, or in terms of -- by
3 staffing, I mean maybe we don't have the right
4 leadership in place, we don't have -- they're not --
5 you know, not carrying out their leadership
6 responsibilities, so.

7 Q. Did you find that in assessing what was
8 happening in California at the time that
9 Catherine Ratelle was terminated in the months leading
10 up to that, that there were problems with the quality
11 and the staffing in the California Division?

12 A. No. I'd say just as a general statement,
13 generally deteriorating performance with respect to
14 occupancy and rate and some of the other financial
15 metrics tend to go hand in hand with a host of other
16 issues be it, you know, turnover or other -- other
17 things that we measure. And I think in the case of
18 California, we felt that -- that it was a leadership
19 issue.

20 Q. Well, isn't it true that in Ms. Ratelle's tenure
21 at Emeritus as the vice-president of Operations, there
22 was -- there were problems with quality and with
23 staffing?

24 MR. REID: It's vague and overbroad, it lacks
25 foundation, and it's argumentative.

1 THE WITNESS: I don't know specifically of -- of
2 issues related to staffing and quality.

3 Q. BY MS. CLEMENT: Well, California had low
4 occupancy and their rates were not as high as some of
5 the other divisions, correct?

6 A. Correct.

7 Q. And those were financial metrics, correct?

8 A. Yes.

9 Q. And you've told me that those financial metrics
10 can come from quality and staffing issues, correct?

11 A. The financial metrics as a general -- as a
12 general statement, I believe usually when you see
13 deteriorating financial metrics over a period of time,
14 you have some leadership issues that need to be
15 addressed that relate to everything we do in
16 operations.

17 Q. Okay. And the person who was hired to
18 permanently replace Catherine Ratelle was
19 Susan Rotella, correct?

20 A. No, I don't believe so.

21 Q. Okay. Who was brought on -- who was hired to
22 replace Ratelle, Catherine Ratelle?

23 A. I -- I don't recall who -- who went into the
24 role next. I know Dale Boyles is in that role now.

25 Q. Isn't it true that after Susan Rotella was --

1 strike that.

2 Isn't it true that after Catherine Ratelle was
3 terminated, there was a period of time where there was
4 no official vice-president of Operations, Chris Belford
5 was managing that, as well as his own division?

6 A. That's correct.

7 Q. And then Susan Rotella was hired by Seattle
8 corporate to be the new vice-president of Operations
9 for California?

10 A. See, my recollection was that Susan Rotella was
11 a vice-president of Quality Services, but maybe I have
12 that wrong.

13 Q. You do.

14 A. Okay.

15 Q. She was hired as the VPO. The vice-president of
16 Quality Services since the merger has always been
17 Lisa Hulse.

18 A. Lisa Hulse, okay. All right. I stand
19 corrected.

20 Q. And you met Susan Rotella, correct?

21 A. I met her.

22 Q. She came to corporate for intensive training
23 with -- I think it was a five- to seven-day training
24 session up here in Seattle. Did you meet her during
25 that time period?

1 A. Probably, yeah.

2 Q. And were you present at the meeting with

3 Ms. Rotella and other senior team members when Mr. Baty

4 greeted her and said, "So you're the one who is going

5 to take over the shit hole"?

6 A. No.

7 MR. REID: Objection -- hold on.

8 The question assumes facts not established and

9 it's argumentative.

10 MS. CLEMENT: Why is it argumentative?

11 JUDGE CECIL: He's answered the question.

12 Q. BY MS. CLEMENT: You weren't present?

13 A. No.

14 MR. REID: The question assumes facts not

15 established.

16 Q. BY MS. CLEMENT: And were you one of the people

17 who approved of Susan Rotella coming onboard as the new

18 vice-president of Operations?

19 A. I wasn't involved in the interview process.

20 Q. Did you approve of her credentials?

21 A. I don't know what her credentials were.

22 Q. So who would have been the person to hire her,

23 Chris Hyatt?

24 A. Chris Hyatt would have been the person to hire

25 her.

1 Q. He didn't need to run that by anyone at your
2 level?

3 A. No. He typically would -- would run it by
4 Budgie and by Jayne and the other executive VPs.

5 Q. Including your sister, Melanie?

6 A. I -- I don't know. I would be speculating.

7 Q. And does Melanie Werdel, your sister, does she
8 report to you?

9 A. Yes.

10 Q. And has that been the case since you've been at
11 Emeritus?

12 A. Yes.

13 Q. And Susan Rotella, did you learn through your
14 sister or through Mr. Hyatt or Budgie that she raised
15 concerns about staffing and staff training in the
16 California Division?

17 A. No.

18 Q. Did your sister, Melanie Werdel, or Budgie
19 Amparo inform you about a meeting that was attended in
20 Southern California with the Department of Social
21 Services, Community Care Licensing regarding a number
22 of facilities of Emeritus in California that were in
23 noncompliance or threatened to be going into
24 noncompliance status?

25 MR. REID: The question assumes facts not

1 established.

2 THE WITNESS: I don't recall that meeting.

3 Q. BY MS. CLEMENT: Did you learn from either Budgie
4 or your sister, Melanie -- or strike that.

5 Did you learn from either Budgie Amparo or
6 Melanie Werdel that Southern California had a meeting
7 in February of 2010 with the Southern California
8 region -- regional team and executive directors in a
9 training session that was led by Melanie Werdel and
10 Budgie Amparo?

11 A. You know, I -- I don't recall the specific
12 training session.

13 Q. Did you learn from Melanie Werdel that there
14 were concerns voiced by Susan Rotella, the new
15 vice-president of Operations, that the facilities in
16 California did not know how to staff their facilities
17 and did not have the training that was required to
18 operate the facilities?

19 MR. REID: The question assumes facts not
20 established.

21 THE WITNESS: I -- I haven't -- I never heard
22 anything from either of them to that case.

23 Q. BY MS. CLEMENT: Has Emeritus ever had a staffing
24 formula in place for its California assisted living
25 facilities?

1 A. No.

2 Q. Okay. And why is that?

3 A. Because the -- we believe that, and the
4 requirement is, that you staff to meet the needs of the
5 residents, and we're -- we have systems in place to
6 accomplish that.

7 Q. And what are those systems that are -- strike
8 that.

9 Did you have systems in place in 2007 and 2008
10 to ensure that there was sufficient staff to meet the
11 needs of the residents in your California facilities?

12 A. Yes, I think that's part of the executive
13 director's responsibility. They use Vigilant as one of
14 the tools, and they have, you know, best practices,
15 guidance from regional directors and -- and other
16 resources within the company.

17 Q. And what other resources did they have at the
18 executive director level that amount to systems in
19 place that would replace a staffing formula for the
20 assisted living facilities?

21 A. They -- they -- we've always encouraged our
22 executive directors to talk to other executive
23 directors about how they approach staffing, and, like I
24 say, regional directors facilitate that. We've got
25 human resources function, you know, there -- there's a

1 lot of avenues for them to try to explore in terms of
2 figuring out the appropriate staffing.

3 Q. Okay. Can you list any of those avenues
4 specifically?

5 A. I just did.

6 Q. Okay. So is there something given to the
7 executive directors in writing that says this is what
8 you're supposed to do when you don't think you have
9 enough staff to meet the needs of your residents?

10 MR. REID: The question is argumentative, it
11 lacks foundation.

12 JUDGE CECIL: Overruled.

13 You can answer the question.

14 And I assume this is California specific?

15 MS. CLEMENT: Yes, sir.

16 THE WITNESS: I think we -- we -- and, again, I
17 can't speak to -- I'm glad for the clarification. I
18 can't speak to California specifically.

19 But we, as part of our training and orientation
20 with executive directors, we -- we, you know, one of
21 their responsibilities is to staff the community and
22 make sure that it's staffed adequately to care for the
23 needs of the residents. And we give them, you know,
24 training and support to try to -- try to accomplish
25 that.

1 So there's -- there's not -- there's not a
2 specific computer program or something out there that
3 does it for them. They have to use some judgment, but
4 there are guidelines.

5 Q. BY MS. CLEMENT: Are there any written guidelines
6 given to the executive directors in the orientation
7 process during -- since, you know, the first year and a
8 half you were at Emeritus, that told them this is what
9 you need to be doing to ensure you have enough staff to
10 meet the needs of the residents?

11 A. I don't know specifically what the -- what the
12 communication to the executive directors with respect
13 to that is.

14 Q. Do you know if, in fact, there is any such
15 communications to the executive directors regarding how
16 to staff their facilities to meet the needs of the
17 residents?

18 MR. REID: It's vague.

19 THE WITNESS: When -- just -- where do I start?

20 It is -- it is part of -- it is one of the most
21 basic parts of their job description is staffing the
22 community. And so together in working with their
23 regional director or others, they -- they need to put
24 together a strategic plan for their building that makes
25 sure that we've got appropriate staff and adequate

1 staff to meet the needs of the residents and provide
2 the service delivery that we're -- to our standards.

3 Q. BY MS. CLEMENT: Right. But does Emeritus
4 provide anything in writing to the executive directors
5 that guides them on how they're supposed to be staffing
6 their facilities?

7 MR. REID: Lacks foundation, it's asked and
8 answered.

9 THE WITNESS: I'll try it one more time here.

10 So back to this is a local business, we cannot
11 send something out on a cookie-cutter basis from
12 Seattle that says -- you know, because every one of our
13 communities is different. The buildings are different.
14 The product offerings are different. The -- they're in
15 different locations and in different markets, and they
16 serve the needs of their market in different ways.

17 There isn't -- this is where executive director
18 judgment and regional director judgment come into play.
19 It's taking all of the guidelines that we have
20 available and pulling on the ones that -- that are
21 appropriate for them to meet the needs within their
22 specific communities.

23 So I would say there -- if -- if we -- we don't
24 have a broad-based cookie-cutter set of guidelines that
25 we can send out because some communities have memory

1 care, some have assisted living, different -- different
2 proportions, some have independent living, some have
3 skilled nursing. There isn't -- there isn't a -- very
4 few communities are alike.

5 Q. BY MS. CLEMENT: Well, you're familiar with the
6 assisted living industry, correct?

7 A. Uh-huh.

8 Q. Yes?

9 A. Yes.

10 Q. And isn't it true that many of the assisted
11 living chains out there like Emeritus actually do have
12 staffing formulas, minimum formulas that they provide
13 to their executive directors to give them a baseline of
14 what they need to have in terms of caregiving staff in
15 the building?

16 MR. REID: It assumes facts not established, may
17 lack foundation.

18 THE WITNESS: I'm not aware of that.

19 Q. BY MS. CLEMENT: And isn't it true that the
20 reason that Emeritus doesn't have staffing formulas, is
21 that something that came onboard with Summerville and
22 Budgie Amparo?

23 A. To my knowledge, Emeritus has never had staffing
24 formulas.

25 Q. Do you know what a staffing ladder is?

1 A. Yes.

2 Q. What's a staffing ladder?

3 A. Staffing ladder is a tool that some communities
4 use to count the number of residents that are either
5 for caregiver or housekeeper or whatever the case may
6 be. And at some point it's a guideline in terms of
7 when you probably need to bring another staff member
8 on.

9 Q. So staffing ladder is like a staffing formula,
10 correct?

11 A. No, it's -- it's more of a guideline.

12 Q. So I'm correct in understanding that there's
13 nothing in writing that's ever given to any of the
14 Emeritus executive directors to tell them this is a
15 minimum level of staff you have to have in your
16 buildings at all times?

17 A. There may be. I'm not aware of it, but there
18 could be.

19 Q. Is it true that the reason why Emeritus doesn't
20 have a staffing -- or strike that.

21 Does Emeritus use staffing ladders?

22 A. We may use that in some communities.

23 Q. Do you know if that's true or not?

24 A. I would -- I don't know for a fact, but I would
25 expect that some communities use that tool.

1 Q. Isn't it true that the staffing in Emeritus at
2 least in '07 and '08 was based on revenue per unit?

3 A. No.

4 Q. It was never based on revenue per resident day?

5 A. No.

6 Q. Do you have an understanding of how the staffing
7 budget was created or the labor budget for the
8 facility?

9 A. Again, the executive director should be meeting
10 with their regional to put together a strategic plan
11 for their community. And part of that would be the
12 staffing plan for the community.

13 Q. And the budgets are all approved at corporate
14 headquarters, correct?

15 A. The -- the -- well, the budgets are approved,
16 have many layers of approval, but -- but then a
17 rolled-up budget gets approved at corporate
18 headquarters.

19 Q. And you're the person who is approving the final
20 budgets?

21 MR. REID: It's vague.

22 THE WITNESS: I approve the final consolidated
23 budget in order -- I approve it to take it to our board
24 of directors, and the final approval is our board of
25 directors.

1 Q. BY MS. CLEMENT: Have you ever been advised about
2 facilities in California going into noncompliance
3 status due to resident care, resident safety issues?
4 A. What time frame are we talking about?
5 Q. In the first three years you've been with the
6 company?
7 A. No.
8 Q. Do you ever know of any time since you've been
9 with the company where approximately 10 percent of
10 Emeritus' California facilities were in noncompliance
11 status with the state?
12 A. No.
13 MR. REID: Assumes facts not established.
14 THE VIDEOGRAPHER: Can we get a clear answer?
15 THE WITNESS: No.
16 Q. BY MS. CLEMENT: Is it correct that Emeritus as
17 part of its growth plan would try to acquire
18 underperforming assisted living facilities and turn
19 them around?
20 MR. REID: That's vague as to time, overbroad.
21 Q. BY MS. CLEMENT: Since you've been with the
22 company, has part of the growth plan been to look at
23 acquiring underperforming facilities and turn those
24 around?
25 A. It's -- it's -- when we have looked at

1 opportunities for acquisition, we tend to have been
2 more attracted to opportunities where we see
3 significant upside, you know, potential by -- by
4 putting our -- bringing our systems and processes and
5 standards to bear on the community. So -- so I would
6 say we -- we tended to acquire communities that were
7 underperforming in many areas and -- and addressing the
8 issues, and that was -- that was part of our growth.

9 Q. And is part of your growth underperforming
10 facilities that were -- did not have full occupancy and
11 the highest rates, and that was someplace where
12 Emeritus thought that they could improve?

13 A. Yes, but back to the -- back to the same point
14 that the way you improve that is by putting systems and
15 processes in place because, generally speaking, they're
16 underperforming financially because they haven't been
17 doing a good job of customer service.

18 Q. And the operating margin that Emeritus expects
19 from its facilities is 30 percent; is that correct?

20 MR. REID: It's overbroad and vague.

21 THE WITNESS: The operating margin varies
22 community by community.

23 Q. BY MS. CLEMENT: And what's the overall goal that
24 Emeritus has since you've been at the company for their
25 operating margins in their communities?

1 MR. REID: Assumes facts not established, it's
2 overbroad.

3 THE WITNESS: The -- the overall goal is to try
4 to improve operating margin over time.

5 Q. BY MS. CLEMENT: And is there a baseline that the
6 communities are expected to hit in terms of their
7 operating margin?

8 A. No.

9 Q. So would you disagree with your sister who
10 testified that the minimum operating margins for
11 Emeritus' facilities was 30 percent?

12 MR. REID: It assumes fact not established, it's
13 argumentative.

14 THE WITNESS: I would disagree.

15 Q. BY MS. CLEMENT: Whose performance did you
16 evaluate in the 2007 through 2011 time frame?

17 A. 2007 through 2011 would have been
18 Justin Hutchens, Ray Brandstrom, Melanie Werdel,
19 whichever assistant I happened to have at the time, and
20 that's probably it.

21 Q. How about Budgie?

22 A. No.

23 Q. Who's evaluating Budgie?

24 A. Budgie reported to the chief operating officer,
25 so it would have been either Justin Hutchens or

1 Chris Hyatt.

2 Q. When facilities requested a higher budget for
3 direct-care staff, how would you respond to that?

4 MR. REID: The question is overbroad, incomplete
5 hypothetical, vague, assumes facts not established.

6 Can we get a ruling on it?

7 JUDGE CECIL: The objection is sustained. There
8 is no evidence that he has any role in that.

9 Q. BY MS. CLEMENT: So let me ask you this:

10 Is your -- one of your primary roles as the
11 chief executive officer is to make rules about money,
12 how money is spent at Emeritus?

13 MR. REID: The question is vague, overbroad,
14 calls for speculation. I don't understand the
15 question. It's vague.

16 Q. BY MS. CLEMENT: Is one of your responsibilities
17 as the CEO since you've been with the company is to
18 make rules about how money is spent?

19 MR. REID: The question is vague and overbroad.
20 And I would like a ruling on that.

21 JUDGE CECIL: It appears that he understands the
22 question, so I'm going to overrule the objection.

23 THE WITNESS: I was going to say I have almost
24 no idea what you are asking.

25 JUDGE CECIL: It appears that I'm wrong.

1 THE WITNESS: I --

2 MR. REID: Okay. Then stop talking.

3 THE WITNESS: Okay.

4 Q. BY MS. CLEMENT: So is it true that the money
5 that Emeritus makes, since you've been with the
6 company, is a result of funds that its customers are
7 paying to Emeritus for care that they're receiving at
8 Emeritus facilities?

9 A. Was there a question?

10 Q. Yes, that was the question.

11 A. Is it?

12 Q. Is it true that the money that Emeritus is
13 making is primarily coming from the seniors who are
14 residents of Emeritus facilities?

15 A. That is correct.

16 Q. Is there any other source of funds besides the
17 residents' funds?

18 A. We receive in some cases management fees for
19 managing properties for others.

20 Q. And the source of those management fees is again
21 the residents' funds?

22 MR. REID: Lacks -- may call for speculation,
23 lack of foundation.

24 THE WITNESS: The source of the management fees
25 is -- is -- if the community is making money, that

1 would be the source of the management fee. If the
2 community is not making money, then whoever owns the
3 community that we're managing it for pays our
4 management fees. So the source is really whoever we're
5 managing for.

6 Q. BY MS. CLEMENT: Primarily the source of
7 Emeritus' revenue is resident funds?

8 A. Yes.

9 Q. And in your --

10 Do you hold any other licenses other than a
11 license to drive a car?

12 A. That's a really broad question. Specific to
13 healthcare?

14 Q. Do you have any of other licenses besides an
15 automobile license?

16 A. I have a concealed weapons permit. Does that
17 count?

18 Q. I don't know if it's a license or not.

19 But do you have any other licenses?

20 A. No.

21 MR. REID: You better watch it. I didn't know.

22 THE WITNESS: This is Washington.

23 MR. REID: I didn't mean those comments that I
24 said earlier.

25 Q. BY MS. CLEMENT: Have you ever been an

1 administrator of any of the facilities that you've been
2 employed by?

3 A. Again, what time frame?

4 Q. At any time. Have you ever been an
5 administrator of a facility, assisted living, skilled
6 nursing?

7 A. Yes.

8 Q. So at some point in time you held a license to
9 operate skilled nursing or assisted living or both?

10 A. Assisted living.

11 Q. Was that in the State of California?

12 A. Yes.

13 Q. And did you let that license expire?

14 A. Yes.

15 Q. And would you agree that at least in California
16 the facilities are expected to -- the Emeritus
17 facilities are expected to comply with the Title 22
18 regulations?

19 MR. REID: It's overbroad.

20 THE WITNESS: Yes.

21 Q. BY MS. CLEMENT: And it's your understanding in
22 all of the years that you've been in this business that
23 those regulations are the framework by which the
24 facilities that operate in California must comply with?

25 MR. REID: Again, that's overbroad.

1 THE WITNESS: Yes.

2 Q. BY MS. CLEMENT: And is it your understanding as
3 a former RCFE administrator and the CEO of a large
4 assisted living company that those regulations are --
5 that relate to resident care are basically safety
6 rules?

7 MR. REID: It's vague, lacks foundation.

8 THE WITNESS: The regulations -- I mean they
9 pertain to all manner of things that -- that have to do
10 with -- with a, you know, state requirement in terms of
11 receiving a license and then being able to maintain
12 your licenses of -- I think, if I remember right, it
13 was like residential care facilities for the elderly or
14 something like that.

15 Q. BY MS. CLEMENT: Good.

16 A. Is it still or have they changed that?

17 Q. No they haven't changed it yet. It's still
18 RCFE.

19 A. Okay.

20 Q. So is it your understanding that rules that come
21 from the Title 22 regulations as it relates to resident
22 care, such as rules about having the level of care that
23 an assisted living in California can accept, is it your
24 understanding that that is a safety rule?

25 MR. REID: It's vague, it lacks foundation, it

1 calls for speculation.

2 THE WITNESS: I'm not familiar with what the
3 requirement is in California in terms of level of care,
4 but -- but, you know, whatever the regulatory
5 requirement is, I -- I would expect that we'll comply
6 with all regulations, whether they're related to level
7 of care or anything else.

8 Q. BY MS. CLEMENT: Well, you do know that assisted
9 living is not skilled nursing, correct?

10 A. Yes.

11 Q. And that assisted living is not the same level
12 of care as skilled nursing, correct?

13 A. That's correct.

14 Q. And skilled nursing is a higher level of care
15 than assisted living?

16 A. Generally, yes.

17 Q. And is it your understanding that the
18 regulations --

19 MR. SMITH: More water.

20 MS. CLEMENT: Oh, thank you. Thank you very
21 much.

22 Q. Is it your understanding that the regulations
23 that -- in California that govern assisted living, as
24 it relates to the type of residents that assisted
25 living can accept, are basically safety rules that are

1 designed to protect the elderly residents?

2 MR. REID: The question is -- lacks foundation,
3 it's vague, it calls for speculation, it's overbroad.

4 THE WITNESS: I think I might have answered it,
5 but all of the regulations, they're -- they're --
6 they've been adopted by the state, and -- and every
7 community that's licensed in the state is expected to
8 comply with them. And that certainly is our intention,
9 to make sure that we're complying with those
10 regulations.

11 I -- whether they're characterized as safety
12 rules or -- I mean the regulations, they're basically
13 regulations that set forth, you know, the requirements
14 to operate a licensed community in the state.

15 Q. BY MS. CLEMENT: And Emeritus is the licensee of
16 its facilities in California, correct?

17 A. I'm not sure what entity is the licensee, but it
18 is some entity affiliated with Emeritus.

19 Q. And would you rely then upon the people who
20 actually sign the licenses for the California
21 facilities as to who the licensee was, if you don't --
22 I'll strike the question.

23 You participate in quarterly earnings calls?

24 A. Yes.

25 Q. And in those earning calls, you talk about

1 occupancy, rate, and margin?

2 A. Yes.

3 Q. And you have investors and analysts on the line
4 who want to hear about how Emeritus is performing
5 financially, correct?

6 A. That's correct.

7 Q. And after you prepared for your deposition today
8 and you read some of the information that was contained
9 in the briefs, including the order from the court, did
10 you make any effort to read what Mary Kasuba had
11 written about her safety concerns regarding Emerald
12 Hills?

13 A. No.

14 Q. And why not?

15 A. I didn't have access to it handy, so I didn't
16 read it.

17 Q. Did you ask any of your staff in your office
18 about whether there were other complaints that had been
19 directed to you that you hadn't read yet regarding
20 California facilities besides Mary Kasuba's letter?

21 A. I -- I rely on our staff to -- to surface
22 anything that -- that they feel is, you know,
23 significant trend or issue that this needs my attention
24 or focus. I've not received any indication that we
25 have such an issue.

1 Q. When you say "significant trend," does there
2 have to be more than one resident care director or
3 executive director writing to the CEOs in Seattle about
4 safety concerns of the residents before action is
5 taken?

6 MR. REID: The question is vague, overbroad,
7 it's an incomplete hypothetical, calls for speculation.

8 Can we have a ruling on that?

9 JUDGE CECIL: Sustained, it's speculative.

10 Q. BY MS. CLEMENT: So is it your testimony that
11 you've never heard of any complaints from the
12 California Division by any executive director, resident
13 care director, regional director, or vice-president of
14 Operations regarding safety concerns in California?

15 A. No, I have not.

16 Q. Have you heard from anyone at the facility
17 level, regional level, or division level in California
18 that there were concerns about the facilities not
19 having sufficient staff to meet the needs of the
20 residents?

21 A. No.

22 Q. How about training, have you heard from anyone
23 at the facility, regional, or divisional level in
24 California that there was not adequate training of the
25 staff?

1 A. I -- you know, I know that we committed some
2 additional training resources to California at some
3 point. So, you know, I know that that was -- that was
4 part of a focus I think in response to some turnover,
5 and it may have been around the time that -- that we
6 changed out Catherine Ratelle. I'm not sure. But I
7 know that we did commit some training resources to
8 California. I wasn't involved in the implementation of
9 that.

10 Q. And what does that mean, you committed some
11 training resources to California?

12 A. Well, we have training, corporate training
13 staff, and we have, you know, regional teams can focus
14 on training in certain areas and be given direction to
15 do that. And I think -- I think there was some effort
16 to make sure that we were -- we were getting training
17 out there to the communities.

18 Q. Do you know any specifics on that?

19 A. No.

20 Q. How about supervision of staff, have you ever
21 heard any complaints from either the facility,
22 regional, or divisional level in California that there
23 was insufficient supervision of the staff in the
24 facilities?

25 A. No.

1 Q. And do you know how that CPR or Comprehensive
2 Process Review works?

3 A. In most cases I think they send in the entire
4 regional team, so regional director of Operations,
5 regional director of Quality Services, and regional
6 director of Sales and Marketing, and they each take a
7 piece of the tool and go through the entire community.

8 Q. And if the community has a flunking score in one
9 aspect of the audit, do you expect the team to come up
10 with a follow-up plan or an action plan to address it?

11 MR. REID: It lacks foundation, it's an
12 incomplete hypothetical, calls for speculation.

13 THE WITNESS: I would expect that that's the
14 case. I think that the tool, though, is used -- is
15 used differently in -- in certain circumstances.

16 Sometimes they'll take pieces of the tool and
17 use it, as well. So, you know, it's used -- it's a --
18 it's a tool for all of our regional support to try and
19 identify any -- any concerns at the community level.
20 So I just wanted to clarify that. So it may not always
21 been the full three-person team that goes in. It could
22 be something less than that.

23 Q. BY MS. CLEMENT: So --

24 A. But you would expect they'd put a plan in place
25 to correct anything they identified.

1 Q. Is that exactly what the Comprehensive Process
2 Review says, come up with an action plan, and you would
3 expect them to follow that out?

4 A. Yes.

5 Q. And you would expect them to do these
6 Comprehensive Process Reviews at least annually?

7 MR. REID: It lacks foundation, calls for
8 speculation.

9 Q. BY MS. CLEMENT: Is it your understanding as the
10 CEO that the Comprehensive Process Reviews are supposed
11 to be done at each facility at least annually?

12 A. I think that is a goal to get them all done
13 annually. I'm not sure that, you know, we're
14 100 percent compliant on it but -- and they tend to
15 prioritize communities that -- where they might have
16 greater concerns. So may not always be 100 percent,
17 but I think that's certainly a goal.

18 Q. And are these Comprehensive Process Reviews, are
19 those documents that you expect corporate to maintain?

20 A. I'm not sure what happens to those when
21 they're -- when -- I mean they're supposed to use them
22 in conjunction with developing an action plan. Once
23 they've put a plan in place and are now monitoring
24 against the plan, I'm not sure what happens to the
25 document.

1 Q. So is there a similar plan or documents that
2 are -- strike that.

3 A CPR is a written document, correct?

4 A. I think it's automated now.

5 Q. Back when you first started, it was written?

6 A. It was written, yes.

7 Q. And is it true that Emeritus has a -- is known
8 since you've been with the company to have a very
9 robust financial department?

10 MR. REID: The question is vague, overbroad.

11 THE WITNESS: I think that Emeritus has had one
12 of the strongest kind of, you know, what I call back
13 office departments in the business.

14 Q. BY MS. CLEMENT: And they also track things on
15 paper, correct?

16 A. Yes.

17 Q. And they track the finances of the company,
18 correct?

19 A. Yes.

20 Q. And they maintain those documents, correct?

21 A. I believe so. I think they're filed with the
22 SEC.

23 Q. And those financial documents aren't related to
24 quality, correct?

25 MR. REID: It's overbroad, and vague, and

1 argumentative.

2 THE WITNESS: No, ultimately, as I said before,
3 I think they are related to quality but -- but they are
4 what they are. They're the financial output.

5 Q. BY MS. CLEMENT: So once the money is swept up to
6 corporate headquarters from the individual facilities,
7 that money, in order to flow back down to the facility,
8 that requires permission from corporate for that money
9 to go back down if it exceeds the facility's budget,
10 correct?

11 MR. REID: The question is vague, and overbroad,
12 speculative.

13 THE WITNESS: The answer is no.

14 Q. BY MS. CLEMENT: Does the nurse at the facility
15 have the authority to hire more staff and exceed the
16 facility budget on staffing?

17 A. If -- if she's got approval of her executive
18 director.

19 Q. Does the executive director have the ability to
20 exceed her budget on staffing?

21 A. Sure.

22 Q. When you say, "Sure," what do you base that on?

23 A. If -- if they have a valid reason to exceed
24 their budget -- the budget is, you know, a best effort,
25 a plan that's put together at the end of one year for

1 the next year, and all kinds of different circumstances
2 ensue but from the time the budget is created until the
3 time real life kicks in, so, you know, it's just a --
4 it's a guide.

5 Q. Isn't it true that the Emeritus executive
6 directors and nurses don't actually have the authority
7 to increase their budget for line staff to care for the
8 residents unless their occupancy and revenue increases?

9 A. No, that's not true at all.

10 Q. Okay. So all of the people who have testified
11 about that would be lying?

12 MR. REID: Objection -- hold on.

13 Objection, it's argumentative, it assumes facts
14 not established, it's overbroad.

15 I'd instruct him not to answer the question.

16 Q. BY MS. CLEMENT: Do --

17 When were you first made aware that California
18 was a troubled division?

19 MR. REID: It assumes facts not established. It
20 lacks foundation.

21 I guess I would ask for a ruling.

22 JUDGE CECIL: Sustained.

23 Q. BY MS. CLEMENT: Did it come to your attention
24 that California was deemed a troubled division, an
25 underperforming division?

1 MR. REID: It's a compound question.

2 Q. BY MS. CLEMENT: Did it come to your attention
3 that California was a troubled division?

4 MR. REID: It's vague.

5 Go ahead.

6 THE WITNESS: At the time that Chris came to me
7 with concerns about Catherine Ratelle and wanting to
8 make a change, I knew that there were issues.

9 Q. BY MS. CLEMENT: Did you do anything to try to --
10 yourself, personally, to immediately try to turn around
11 what you understood from Chris Hyatt were the problems
12 in the California Division?

13 A. Yeah, we sent Chris Belford, one of our
14 strongest VPs, in there to try to determine what --
15 what the issues were and to, you know, be able to start
16 focussing on addressing those.

17 Q. And is it your understanding that what
18 Chris Belford did was to instruct the region and
19 facility level directors to cut labor?

20 A. I'm not aware of that.

21 Q. I'm going to show you what we've marked as
22 Exhibit 467. And just looking at the first slide on
23 page one --

24 MR. SMITH: Show the judge to get some kind of
25 flavor of the kind of questions going on in this

1 deposition.

2 MS. CLEMENT: We've had a ruling, I don't know
3 if you know that, that we can get into finances on
4 punitive damages ruling. That's why I'm here.

5 MR. REID: Actually, that's not why you're here.
6 You're here for a specific order to take the deposition
7 of an apex employee on specific issues that you
8 articulated you needed to ask this witness, so just to
9 clarify.

10 Q. BY MS. CLEMENT: Mr. Cobb, would you agree that
11 Emeritus corporate revenue as reported in the 2011 10K
12 has increased every year from 2007 through 2011 as
13 reflected in this first page of Exhibit 467?

14 MR. REID: Okay. Are you asking him to validate
15 the numbers on this page, or are you asking him whether
16 there has been an increase from '07 to 2011?

17 MS. CLEMENT: Is that an objection?

18 MR. REID: I don't know what you're asking.

19 MS. CLEMENT: Okay. I'll rephrase the question.

20 MR. REID: Okay.

21 Q. BY MS. CLEMENT: Mr. Cobb, would you agree that
22 Emeritus corporate revenue has been reported in your --
23 Can he please have the exhibit?

24 MR. REID: There. Are you asking him a question
25 about the exhibit?

1 MS. CLEMENT: He can reference the exhibit if
2 you like. It's all coming from the 2011, 10K report
3 that he authenticated.

4 MR. REID: I'll tell you what, why don't you ask
5 the question, and then we will figure out if he needs
6 to look at the document.

7 JUDGE CECIL: Why don't you ask the question,
8 counsel. Your time is running out.

9 Q. BY MS. CLEMENT: Do you agree that Emeritus
10 corporate revenue, as reported in the 2011 10K report
11 has increased every year from 2007 through 2011?

12 A. I believe that's the case.

13 Q. And would you agree that Emeritus' net income as
14 reported in Emeritus 2011 10K has shown a loss from --
15 each year from the period 2007 through 2011?

16 A. I think we actually reported -- we showed a gain
17 in Q2 of 2011 because we -- we sold some properties.
18 So I think we actually did have some net income at
19 least in one of those periods.

20 Q. When you say, "Q2," that was a quarter?

21 A. Uh-huh.

22 Q. My question was:

23 Would you agree that Emeritus' net income as
24 reported in your 2011 10K, so your annual report, has
25 shown a loss each year from 2007 to 2011?

1 A. But you said every period the first time, so
2 that confused me.

3 I believe we've shown a loss every -- every
4 year.

5 Q. And do you believe that Emeritus' adjusted
6 EBITDA and cash flow from operations adjusted, as
7 defined in your proxy statements, are a better way to
8 measure executive performance for the purpose of
9 determining executive stock and cash bonus compensation
10 than net income?

11 MR. REID: The question is vague.

12 THE WITNESS: I -- I would agree. Net income
13 has a number of factors related to lease accounting and
14 other things that make it a little more difficult to
15 evaluate performance on.

16 Q. BY MS. CLEMENT: And, in fact, in interviews you
17 have stated that the Emeritus story to look at, you
18 don't want to look at net operating income, but instead
19 you want to look at adjusted EBITDA and cash flow,
20 correct?

21 A. That's correct.

22 Q. And that's what you believe, correct?

23 A. Uh-huh, yes.

24 MR. SMITH: Just as a heads up, you've got a
25 little less than five minutes left.

1 Q. BY MS. CLEMENT: And would you agree that the
2 story of Emeritus is really a cash flow story?

3 MR. REID: The question is vague, incomplete,
4 overbroad.

5 THE WITNESS: I would -- the story of Emeritus
6 is, you know, much, much bigger than that. I would say
7 that relating to how you evaluate financial performance
8 that -- that the best way to evaluate our financial
9 performance, as you said, is on combination of EBITDA
10 and cash flow.

11 Q. BY MS. CLEMENT: So in interviews you've stated
12 that Emeritus is really focused on cash flow and that
13 Emeritus' GAAP financials are not really how Emeritus
14 is valued because you run such large amounts of
15 depreciation, correct?

16 A. And specifically depreciation related to lease
17 accounting, yes.

18 Q. And then --

19 And part of why Emeritus has been translating
20 its business from lease to owner, in other words,
21 buying the buildings, has been to take advantage of the
22 depreciation that Emeritus can get on the buildings
23 once it owns them?

24 MR. REID: It's overbroad.

25 THE WITNESS: Actually, by GAAP accounting now,

1 it makes no difference. We have to treat leases and
2 owned exactly the same way on the -- in terms of our
3 accounting agreement.

4 Q. BY MS. CLEMENT: But financially it makes more
5 sense for Emeritus to own its buildings rather than
6 lease them?

7 MR. REID: It's overbroad.

8 THE WITNESS: You know, we're actually moving in
9 the other direction. We just announced a deal to lease
10 144 communities, so I -- there's not a global statement
11 that says it makes more sense to own versus lease. I
12 think it depends on the market conditions. They're
13 both financing sources, and so it kind of depends on
14 cost of capital and the market conditions for those
15 respective financing options.

16 Q. BY MS. CLEMENT: From 2007 until this year, has
17 it been more advantageous for Emeritus to grow its
18 business from acquiring and transferring -- acquiring
19 existing buildings from underperforming facilities, as
20 well as translating from leases to purchasing its
21 buildings?

22 MR. REID: It's overbroad and compound.

23 THE WITNESS: We -- in 2007 and 2008, we -- we
24 bought -- we converted some -- we basically bought in
25 some leaseholds. So we bought in our leasehold

1 interests and converted those buildings to being owned
2 in part because we did an offering early in 2007, and
3 we -- and as a result of that additional shareholder
4 money coming in, we had the equity component to buy
5 those in.

6 But from 2008 to the present, we have grown
7 through pretty balanced combination of owning and
8 lease -- actually, a little -- weighted a little bit
9 more on the leasing side and -- but owning some of
10 them.

11 Q. BY MS. CLEMENT: Since you've been at the
12 company, Emeritus has gone from six percent, up until
13 this last deal last, two weeks, went from approximately
14 six percent owned to more than 60 percent owned,
15 correct?

16 A. I think we were at about 53 percent before this
17 last week.

18 Q. Okay. So from --

19 A. Of our consolidated properties so not everything
20 we managed, too, but just of our consolidated.

21 Q. So the consolidated properties that Emeritus
22 operates, they went from approximately six percent to
23 53 percent ownership over the last four years?

24 A. Uh-huh, yes.

25 Q. And over the last five years, has Emeritus ever

1 been in default in any of its loans or lease covenants?

2 A. We may --

3 MR. REID: It's overbroad and lacks foundation.

4 THE WITNESS: We may have been in default of a
5 few.

6 Q. BY MS. CLEMENT: And despite the fact that
7 Emeritus was in default on some of its loans or lease
8 covenants, that never restricted its ability to pay
9 executive compensation, correct?

10 MR. REID: It assumes facts not established,
11 it's argumentative.

12 THE WITNESS: Well, I'd clarify first that if we
13 were in a technical default on something, we always had
14 that resolved by the end of every quarter. So we
15 never -- we never had a -- a situation where we were
16 being put into default by a lender or landlord.

17 Q. BY MS. CLEMENT: Okay. So let me rephrase.

18 So if Emeritus was at risk for being in default
19 of its loan or lease covenants, they would enter into
20 waiver agreements with the lender or landlord, correct?

21 MR. REID: It's overbroad.

22 THE WITNESS: Waiver or other agreements, yes.

23 Q. BY MS. CLEMENT: And that those risks of being in
24 default of either loan or lease covenants has never
25 restricted Emeritus' ability to pay executive

1 compensation since you've been with the company,
2 correct?

3 A. No.

4 Q. Is that correct?

5 A. That's correct.

6 Q. Okay. And --

7 MR. SMITH: It's now after four o'clock. Do you
8 have one more question?

9 MS. CLEMENT: I have about four more questions.

10 Q. Do you know what the year-to-date net income is
11 for Emeritus?

12 A. No.

13 Q. If Emeritus' net income was reduced by an
14 additional \$10 million, would Emeritus go bankrupt?

15 MR. REID: It calls for speculation, lacks
16 foundation, it's vague.

17 THE WITNESS: No.

18 Q. BY MS. CLEMENT: If Emeritus' net income was
19 reduced by an additional \$20 million, would Emeritus go
20 bankrupt?

21 MR. REID: Calls for speculation, incomplete
22 hypothetical, may call for a legal conclusion.

23 I guess I'd ask for a ruling on that.

24 JUDGE CECIL: Sustained on the latter.

25 Q. BY MS. CLEMENT: If Emeritus' net income was

1 reduced by an additional \$20 million, would that
2 preclude Emeritus from continuing to operate?

3 MR. REID: Calls for speculation.

4 Go ahead.

5 THE WITNESS: I think we would still be able to
6 operate.

7 Q. BY MS. CLEMENT: And that's because Emeritus has
8 significant cash on hand, correct?

9 MR. REID: It's argumentative as phrased.

10 THE WITNESS: We -- we have -- we have
11 sufficient cash on hand for continued operations.

12 Q. BY MS. CLEMENT: And Emeritus also has a
13 significant line of credit, correct?

14 A. I don't believe we have our line of credit
15 anymore.

16 Q. Okay. And if Emeritus' net income was reduced
17 by an additional \$30 million, would Emeritus still be
18 able to operate?

19 MR. REID: It calls for speculation, it's an
20 incomplete hypothetical, it's vague.

21 THE WITNESS: Depends on the circumstances, but
22 I would have to say it depends -- it would depend on
23 the circumstances at the time.

24 MR. SMITH: Okay. Your four extra questions
25 were eight. I think we will call it a day.

1 MS. CLEMENT: I actually have one more question
2 I'd like to ask.

3 MR. SMITH: A ninth question?

4 MS. CLEMENT: Sorry.

5 Q. BY MS. CLEMENT: If Emeritus' net income was
6 reduced by an additional \$50 million would Emeritus
7 still be able to operate?

8 MR. REID: Calls for speculation, it's an
9 incomplete hypothetical, it's overbroad and vague.

10 THE WITNESS: That would --

11 MR. REID: Can I get a ruling on that, your
12 Honor.

13 JUDGE CECIL: Sustained.

14 Q. BY MS. CLEMENT: And is it true that in 2011 --

15 MR. SMITH: Ms. Clement, we're done. It's after
16 four o'clock.

17 JUDGE CECIL: I thought that was your last
18 question?

19 MS. CLEMENT: I keep getting objected to, so.

20 So this is going to make our record that we're
21 planning to come back, and we'd appreciate dates from
22 counsel.

23 MR. SMITH: Okay. I'll make a record that we do
24 not intend to have Mr. Cobb return for another
25 deposition. Over the company's objection, Mr. Cobb is

1 the CEO of this company and made himself available for
2 a three-hour deposition in a personal injury case
3 involving a single elderly resident that took place in
4 another state over four years ago.

5 Legitimate function of the discovery depositions
6 is to learn facts relative to the issues in a lawsuit.
7 Apparently, Ms. Clement, you've already taken over
8 40 depositions many, many lasting several days. You
9 knew full well in advance of this particular deposition
10 that other persons in divisions were directly involved
11 in residential care and quality control and even a
12 smaller subset of any facts that have any bearing on
13 the plaintiffs' injuries.

14 I believe that your original estimate of an hour
15 and a half to complete this deposition is more than
16 generous. I don't think it should have taken you more
17 than ten minutes to determine that this witness, the
18 CEO of a national company, does not have any personal
19 knowledge of the facts regarding the plaintiffs' care.
20 In fact, I don't believe her name came up once during
21 either deposition today.

22 Instead the tone of the deposition, the content
23 was largely argumentative. You started the deposition
24 with argumentative discussion about the company's brand
25 promise. That didn't lead to any information relevant

1 to the lawsuit. You've apparently dug up every
2 complaint or criticism you could find from every
3 disgruntled patient or former employee and went at
4 great length in your questioning, even though this
5 witness was not involved and had no knowledge about the
6 underlying events regarding those complaints.

7 Your final series of questions about Emeritus'
8 financial performance just highlights my concerns about
9 the purpose of your taking this deposition and our
10 reasons for not agreeing to continue it.

11 JUDGE CECIL: Counsel, just to let you know, I
12 don't plan -- given the fact that this was all reported
13 by a CSR, I don't plan of making a report or
14 recommendation to the court because I think everything
15 that I have to say is in the transcript, so don't be
16 anticipating, looking for something from me.

17 And, obviously, if Ms. Clement wants to pursue
18 either/or both, it will be pursued through the court,
19 not through me.

20 MS. CLEMENT: Absolutely. Thank you.

21 THE WITNESS: Thank you.

22 THE VIDEOGRAPHER: You're all done, Lesley?

23 MS. CLEMENT: Just need to get back the
24 exhibits.

25 THE VIDEOGRAPHER: I'm on the video record.

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MS. CLEMENT: Oh, yes.

THE VIDEOGRAPHER: This ends tape number two of
the deposition of Lewis Granger Cobb. We are going off
the record at 4:07 p.m.

(Deposition adjourned at 4:07 p.m.)

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[illegible]

That the foregoing deposition was taken before
me at the time and place herein set forth;

That the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me to the best of my ability and thereafter transcribed into typewriting;

IN WITNESS WHEREOF, I subscribe my name on this
9th day of November, 2012.

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Pursuant to Section 2025(q)(1) of the Code of Civil Procedure of the State of California, I hereby certify that I have read my deposition transcript, made those changes and corrections that I deem necessary, and approve the same as now true and correct.

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LEWIS GRANGER COBB
1521 Second Avenue
Seattle, WA 98101

Re: Boice v. Emeritus
Deposition taken on October 30th, 2012

Dear Mr. Cobb:

Your deposition transcript is now available for your signature. You may wish to discuss with your attorney whether he/she requires that it be read, corrected and signed before it is filed.

If you wish to read your transcript, please call our office between the hours of 9:00 a.m. and 4:00 p.m. to schedule an appointment. Your transcript will be available for corrections until December 9th, 2012, at which time the original of your transcript will be forwarded to the noticing party, Ms. Clement.

It is our policy not to release the original transcript from our office.

Respectfully,

CHERYL L. KYLE,
CSR No. 7014

cc: All attorneys present at time of proceeding.

It is not necessary to contact this office if you DO NOT wish to read your transcript.